This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

HDI
HL 38FP 3

WISCONSIN

DAIRY and FOOD LAWS

1909

WIS
S
US/WI
376.3
F09
HARVARD
LAW
LIBRARY

Digitized by Google

Digitized by Google

WISCONSIN

DAIRY AND FOOD LAWS

Cocoa (p 49)

AND

DECISIONS OF COURTS.

Published by the Dairy and Food Commissioner.

JULY, 1909

MADISON, WIS.
Democrat Printing Company, State Printer
1909

B.25

Digitized by Google

Digitized by Google

Wisconsin. Laws, statutes, etc. Food law
e ‡

WISCONSIN

DAIRY AND FOOD LAWS

AND

DECISIONS OF COURTS.

Published by the Dairy and Food Commissioner.

JULY, 1909

MADISON, WIS.
DEMOCRAT PRINTING COMPANY, STATE PRINTER
1909

Digitized by Google

Wisconsin : Separate Series

Wis.
135
F686
909

ORGANIZATION OF THE COMMISSION.

J. Q. EMERY, Dairy and Food Commissioner.

RICHARD FISCHER, PH. D.,
Chemist.

U. S. BAER,
Assistant Commissioner.

H. C. LARSON,
Second Assistant Commissioner.

FLORENCE Q. NORTON,
Secretary.

ETHEL D. THOMAS,
Stenographer and Confidential Clerk.

A. E. KUNDERT, M. S.,
Assistant Chemist.

HARRY KLUETER, PH. G.,
Assistant Chemist.

FRED P. DOWNING, A. B.,
Assistant Chemist.

F. M. BUZZELL,
Chief Food Inspector.

F. E. CARSWELL,
E. L. ADERHOLD,
J. D. CANNON,
FRED MARTY,
R. B. SOUTHARD,
J. B. LINZMEYER,
Cheese Factory, Dairy and Food Inspectors.

P. A. LARSON,
JAMES VAN DUSER,
S. J. DUFNER,
W. A. VOIGT,
P. W. GUSE,
Creamery, Dairy and Food Inspectors.

W. F. SCOTT,
Food Inspector.

JAN 16 1936

Digitized by Google

CONTENTS.

	Page
Organization of the commission	2
Introductory	6–8
Section 1410. Dairy and food commissioner, assistant, chemist, agent, stenographer and confidential clerk, appointment of; supplies; report	9
Sec. 1410a. (As amended by ch. 193, 1905.) Dairy and food commissioner, powers and duties; duty of district attorney; special counsel; fines	10
Sec. 1410aa. (Ch. 144, 1903.) Assistant chemist, agents and experts, appointment of; compensation	10
Sec. 1410ab. (Sec. 1, ch. 390, 1905.) Second assistant dairy and food commissioner, assistant chemist, inspectors, appointment of; salaries and expenses	11
Sec. 1410ac. (Sec. 2, ch. 390, 1905.) Powers of officers designated in Sec. 1410ab	12
Sec. 1410—1. (Ch. 386, 1907.) Secretary, assistant chemist, inspectors, appointment of; duties; salaries; expenses	12
Sec. 1410b. Access to buildings; samples of food, etc.; stencils for cheese	13
Sec. 1410c. Submission of articles for analysis; evidence; annotations; questions of evidence	14
Sec. 1410d. (As amended by ch. 206, 1907.) Farmers' institutes; expenses of analyses	15
Sec. 1494a. (As amended by ch. 306, 1907.) Wrongful use of milk etc.; by butter or cheese manufacturer; fraudulent accounts	15
Sec. 1494aa. (Sec. 1, ch. 43, 1903, as amended by ch. 99, 1907.) Standard measures for Babcock milk and cream test; composite samples; statements	15
Sec. 1494ab. (Sec. 2, ch. 43, 1903.) Sale of false measures a misdemeanor	16
Sec. 1494ac. (Sec. 3, ch. 43, 1903, and Sec. 1, ch. 99, 1905.) Underreading or overreading of Babcock or other milk test unlawful	16
Sec. 1494ad. (Sec. 4, ch. 43, 1903, as amended by ch. 99, 1905.) Penalty for violation of three preceding sections	16
Sec. 1557s, Sec. 1557t and Sec. 1557u. (Ch. 393, 1909.) Adulteration of malted liquors; standards and definitions; penalty.	17
Sec. 1636 l. (Ch. 352 1909.) Adulteration of and fraud in sale of linseed oil, turpentine, white lead, oxide of zinc, linseed oil compounds, etc.; penalty; duty of dairy and food commissioner; special counsel; assistant chemist; repeal of Secs. 1636—91 to 1636—95, inc.	18–22
Sec. 4438g. Penalty for false labeling cheese	22
Sec. 4599. Sale of unwholesome provisions	22

Digitized by Google

Page

Sec. 4600. (As amended by ch. 202, 1909.) Sale of adulterated articles; definitions; penalty; annotations: agent, pleading, ignorance 22–23
Sec. 4601. (As amended by ch. 202, 1909.) Adulteration, what is; annotations: imitation, scope of statute, pleading..... 22–25
Sec. 4601a. (As amended by ch. 104, 1905.) Canned goods, labels on 25
Sec. 4601b. (As amended by ch. 77, 1907.) Label on baking powder; annotation: validity 26
Sec. 4601aa. (Ch. 173 1907.) Misbranding of articles of food.. 26
Sec. 4601—1a. (Ch. 152. 1905, as amended by ch. 557, 1907.) Syrups, molasses, glucose mixtures; required labels: wording, color, type 27–29
Sec. 4601—2a. (Ch. 557, 1907.) Maple syrup mixtures; required labels: wording, color, type 29
Sec. 4601—3a. (Ch 557, 1907.) Penalty, violation of Secs. 4601—1a, 4601—2a 31
Sec. 4601—4a. (Ch. 205 1907.) Standards of purity for food products 31
Sec. 4601—4a. (Ch. 399, 1909.) Definitions and standards for food products 31–54
Sec. 4601—5. (Ch. 344, 1909.) Mixed jellies, jams, preserves and fruit butters: definitions and standards labels, penalty..... 54–55
Sec. 4601—6. (Ch. 381, 1909.) Sausage and sausage mixtures; definitions and standards; penalty..... 56
Sec. 4601c. Label on poisonous medicine; penalty..... 56
Sec. 4601e. (Sec. 1, ch. 33, 1905.) Foods containing chemical preservatives 57
Sec. 4601f. (Sec. 2 ch. 33 1905.) Penalty for violation of Sec. 4601e 57
Sec. 4601g. (Ch. 399, 1909.) Artificially bleached flour; articles of food containing benzoic acid or benzoates; penalty..... 58
Sec. 4601h. (Ch. 334. 1909.) Sanitary production and distribution of food; powers of dairy and food commissioner, assistants, etc.; duty of district attorney; penalty..... 59
Sec. 4606. Coloring grain; penalty 60
Sec. 4607. (As amended by ch. 138, 1905 and ch. 14, 1909.) Sale of adulterated milk and cream; penalty; annotations: construction, validity, sale.—what is, intent to sell,—evidence of 60–61
Sec. 4607a. (As amended by ch. 138, 1905.) Milk and cream, standard for pure; evidence; annotations: validity, intent immaterial 61–63
Sec. 4607b—1. (Sec. 1 ch. 313 1899.) Milk of diseased cows, or cows kept in unsanitary condition, etc..... 63
Sec. 4607b—2. (Sec. 2, ch. 313, 1899.) Foreign substances not to be added to milk or cream not pasteurized..... 63–64
Sec. 4607b—3. (Sec. 3, ch. 313 1899, as amended by ch. 66, 1905.) Penalty for violation of Secs. 4607b—1 and 4607b—2..... 64
Secs. 4607b—4 to 4607b—9, inc. (Ch. 215, 1909.) Unsanitary milk and cream, utensils, premises; penalty..... 64–67
Sec. 4607b—10. (Sec. 1, ch. 247, 1905.) Condensed milk..... 67
Sec. 4607b—11. (Sec. 2, ch. 247, 1905.) Evaporated or condensed cream 67
Sec. 4607b—12. (Sec. 3 ch. 247 1905.) Penalty for violation of either of two preceding sections..... 67
Sec. 4607c. (As amended by ch. 151, 1901.) Filled cheese; oleomargarine; penalties; annotations: validity, expose for sale, sale,—what is, ruling of supreme court of Wisconsin in Meyer vs. State..... 67–72

Digitized by Google

Page

Sect. 4607d. Notice of sale of imitation butter; annotations: validity, notice, sale by agent, oleomargarine 72–73
Sec. 4607e. Imitation butter and cheese in state institutions; penalty 73
Sec. 4607d—1. (Sec. 1, ch. 76, 1899, as amended by ch. 34, 1905.) Renovated butter; how marked..... 73
Sec. 4607d—2. (Sec. 2, ch. 76, 1899.) Penalty for violation of 4607d—1 74
Sec. 4607f—1. (Sec. 1, ch. 299, 1905.) Sale of adulterated honey; penalty 74
Sec. 4607g. Sale, etc., diseased meat; killing diseased animals, etc. 75
Sec. 4607h. (As amended by ch. 78, 1907.) Obstructing dairy and food officers; penalty..... 75
Sec. 4607i. (As amended by ch. 297, 1905, as amended by ch. 370, 1907.) Sale of vinegar; standards; penalty; annotations: coloring matter, validity..... 75–78
Sec. 4607j. Cleanliness, etc., of dairy cows and utensils; penalty 78
Sec 4607k. Sale of impure ice; notice of place where cut; penalty 78
Sec. 4608 l. (Sec. 1, ch. 243, 1901, and ch. 261, 1905.) Antiseptics, etc., in meat products; penalty..... 79
Sec. 4608m. (Ch. 151 1905.) Sale of maple sugar, maple syrup, regulated; forfeiture 79
Secs. 4608p, 4608q, 4608r, 4608s, 4608t. (Secs. 1, 2, 3, 4, 5, ch. 187, 1905.) Buckwheat flour: adulteration of; labels; presumption; sale, what; penalty..... 79–80
Sec. 4608u. (Ch. 228, 1905.) Lemon and vanilla extracts; forfeiture 80
Sec. 335c. (Ch. 519, 1907.) Quarterly bulletins..... 80
Supreme Court decisions:
Foods, ignorance of fact of adulteration..... 82–83
Foods, what are adulterations..... 84
Lard vinegar, liquors, baking powder..... 85
Standards, dairy products..... 86
Cheese, oleomargarine 87–88

Digitized by Google

INTRODUCTORY.

The supply of pamphlets containing the dairy and food and drug laws of Wisconsin, published June, 1905, having become exhausted and amendments having been made to those laws and important new dairy and food and drug laws having been enacted by the legislature of 1909, this compilation of the dairy and food and drug laws of the state of Wisconsin has been made necessary.

Attention is called to the following new laws:

Chapter 399 of the laws of 1909, relating to the adulteration of malted liquors, fixes standards and provides a penalty for violation of the law. It takes effect Ju'y 1, 1909.

Chapter 352 of the laws of 1909 relates to the prevention of the adulteration of and fraud in the sale of linseed oil, turpentine, white lead, oxide of zinc and linseed oil compounds. This statute fixes standards for the various products named and provides for a form of label. It was made to take effect and be in force from and after its passage and publication, except that the provisions relating to the *labeling* of turpentine, white lead, oxide of zinc and linseed oil compounds do not take effect until January 1, 1911.

Chapter 302 of the laws of 1909 makes important amendments in the general law on adulteration of articles of food.

Chapter 398 of the laws of 1909 prescribes legal definitions and standards for a large number of food products. It is one of the most important food laws ever enacted by a state legislature. It provides a "square deal" for honest manufacturers, jobbers, retailers and consumers. It removes the serious defects from the Wisconsin dairy and food laws which Hon. John C. Spooner, on the floor of the United States senate, pointed out as existing in the national food law and which he argued with much force might be a menace to its validity. The enactment of the

Digitized by Google

law fixing these definitions and standards is a long step forward in food legislation. The consumer can more readily hold the dealer responsible for the purity and soundness of the food product which he purchases. In return it gives the retailer the same leverage with the jobber and the jobber the same opportunity with the manufacturer. *It removes the uncertainty as to what constitutes an offense under the laws.* This act takes effect from and after January 1, 1910. In effect, it writes into the laws of the state the definitions and standards provided by chapter 205 of the laws of 1907, the repeal of which latter law is made effective on the date when chapter 399 of the laws of 1909 takes effect.

Chapter 394 of the laws of 1909 regulates the sale of mixed jellies and jams. It takes effect from and after October 1, 1909.

Chapter 381 of the laws of 1909 defines sausage and regulates its sale and also the sale of "sausage with cereal," or "sausage with potato flour." This law is destined to prevent "water," "cereals," "potato flour," etc., from masquerading under the name of "sausage." The act takes effect from and after October 1, 1909.

Chapter 399 of the laws of 1909 makes it a misdemeanor to sell for use or consumption in this state any flour that has been artificially bleached. Already the shipment in interstate commerce of chemically bleached flour has been put under ban by the officers charged with the administration of the national food and drugs act of June 30, 1906. Chapter 399, of the laws of 1909, also makes it a misdemeanor to sell for use or consumption in this state any article of food which contains added benzoic acid or benzoates, except as provided in the act. This chapter takes effect from and after January 1, 1910.

Chapter 334, of the laws of 1909, relates to the sanitary production and distribution of food and defines the duties of the dairy and food commissioner in relation thereto. It makes it a misdemeanor to manufacture or prepare for sale food unless in the process of its manufacture for sale or its preparation for sale it is securely protected from filth, flies, dust or other contamination or other unclean, unhealthful or unsanitary conditions. It makes it a misdemeanor to store or offer or expose for sale or sell food unless securely protected from filth, flies, dust or other contamination or other unclean, unwholesome or unsanitary conditions. It is apparent that this statute wisely provides against the practices of those dealers who so display their goods

Digitized by Google

as to expose them to dust, filth, flies or other contamination. *The wisdom of prompt compliance with the provisions of this statute will appeal to all dealers.* This act is made to take effect and be in force from and after its passage and publication.

Chapter 215, of the laws of 1909, including sections 4607b—4, 5, 6, 7, 8, 9, is a specific law relating to the sanitary production of milk and cream. This statute covers every operation from the cow to the consumer. It discloses a purpose to correct the most glaring evils now existing in dairy practice. There seem to be no technical loopholes whereby violators of this law may escape its penalties. Not only are producers of unsanitary milk and unsanitary cream amenable to prosecution under this statute, but butter and cheese manufacturers are likewise held responsible for the sanitary condition of the milk and cream which they receive and manufacture into cheese and butter and are likewise amenable to prosecution if they receive and manufacture unsanitary milk or unsanitary cream into food products. This law and its effective enforcement should materially raise the quality of Wisconsin dairy products. This law is made to take effect from and after its passage and publication.

This pamphlet also includes a compilation of decisions of various supreme courts, interpreting various food laws in different states and determining their validity.

Digitized by Google

DAIRY AND FOOD LAWS OF WISCONSIN.

Dairy and Food Commissioner; supplies; assistants and report. Section 1410, Statutes of 1898. The dairy and food commissioner shall be appointed by the governor, by and with the advice and consent of the senate, for a term of two years from the date of his appointment and until his successor qualifies. Vacancies occurring from any cause shall be filled for the remainder of the term by the governor, with the advice and consent of the senate if it shall be in session, or if it is not in session, subject to approval at the session next held after such appointment is made, if the term for which it was made has not expired. Such commissioner may, with the advice and consent of the governor, appoint an assistant, who shall be an expert in dairy products, and a chemist who shall be a practical analytical chemist; he may also, with such advice and consent, appoint an agent for the inspection of milk dairies, factories and creameries, and to assist in the work of the dairy and food commission at such times and for such periods of time as may be required in the enforcement of the dairy and food laws. The compensation of such agent shall be three dollars per day for each day of actual service, and his expenses, to be audited by the secretary of state on the presentation of accounts approved by the dairy and food commissioner. Said commissioner may also appoint a stenographer and confidential clerk. The commissioner shall be furnished with a suitable office in the capitol, and with such supplies and printing as may be necessary. He shall as soon as practicable after the thirtieth day of September in each even-numbered year make a report to the governor and give therein an itemized statement of all expenses incurred by him, and of all fines collected, with such statistics and other information and suggestions as he may regard of value.

Digitized by Google

His powers and duties; duty of district attorney; special counsel; fines. Section 1410*a*, Statutes of 1898. [As amended by ch. 193, laws of 1905.] It shall be the duty of the commissioner to enforce the laws regarding the production, manufacture and sale of dairy products, the adulteration of any article of food or drink, or condiment or of any drug and personally or by his assistants to inspect any milk, butter, cheese, lard, syrup, coffee, tea or other article of food, drink, condiment or drug made or offered for sale within this state which he may suspect or have reason to believe to be impure, unhealthful, adulterated or counterfeit, and to prosecute or cause to be prosecuted any person, firm or corporation engaged in the manufacture or sale of any adulterated or counterfeit article or articles of food or drink, or condiment or drug in violation of law. The district attorney of the county in which a violation of any such law has occurred shall, when called upon by the commissioner or either of his assistants to do so, give all the aid he can to secure the execution of the law and shall prosecute cases arising under the provisions of this chapter or other provisions of these statutes relating to the adulteraion of food, drinks, condiments and drugs and their sale. Such commissioner shall have power to appoint, with the approval of the governor, special counsel to prosecute or assist in the prosecution of any case arising under the provisions of these statutes imposing a penalty for adulterating dairy products, or foods, drinks, condiments or drugs, or practicing deception or frauds in the manufacture and sale thereof. All fines collected in prosecutions begun or caused to be begun by the dairy and food commissioner or either of his assistants shall be paid into the state treasury.

Appointments; compensation; agents and experts. Section 1410aa. (Chapter 144, laws of 1903.) In addition to the provisions of section 1410 of the statutes of 1898, the dairy and food commissioner may, with the advice and consent of the governor, appoint an assistant chemist for the dairy and food commission, when needed, who shall be paid not to exceed fifty dollars per month, in the same manner as the analytical chemist is paid; he may also, with such advice and consent, appoint two agents for the inspection of foods, milk dairies, cheese factories and creameries, and to assist in the work of the dairy and food commission at such times and for such periods of time as may be required in the enforcement of the dairy and food laws. The compensation of each of said agents

Digitized by Google

shall be three dollars per day for each day of actual service and his expenses to be audited by the secretary of state on the presentation of accounts approved by the dairy and food commissioner. In addition to the foregoing, the dairy and food commissioner may appoint one expert agent or more for the special inspection of cheese factories and creameries and so far as may be deemed practicable their sources of supply, for such times and periods of time as may be deemed necessary, provided that no cost for compensation or traveling expenses of said expert agents shall thereby be incurred by the dairy and food commissioner.

Assistants; inspectors; salaries and expenses. Section 1410ab. (Sec. 1, ch. 390, 1905.) In addition to the officials and appointees provided for by section 1410 of the statutes of 1898, and of chapter 144 of the laws of 1903, the dairy and food commissioner may, with the advice and consent of the governor, appoint a second assistant dairy and food commissioner, an assistant chemist and eight agents or inspectors, whose duties shall be to assist in promoting the work of the dairy and food commissioner in the manner herein provided and in such way as may be required by the dairy and food commissioner in the enforcement of the dairy and food laws. Of the eight agents or inspectors herein provided for, three shall be creamery, dairy and food inspectors, whose duties, in addition to the general duties hereinbefore provided, shall be to inspect creameries, dairies, foods and drugs, under the direction and supervision of the dairy and food commissioner; four shall be cheese factory, dairy and food inspectors, whose duties, in addition to the general duties hereinbefore provided, shall be to inspect cheese factories, dairies, foods and drugs, under the direction and supervision of the dairy and food commissioner, and one shall be chief food inspector. The second assistant dairy and food commissioner and the creamery, dairy and food inspectors herein provided for, shall be expert creamery butter makers, skilled in the technical work of creameries, competent judges of creamery products and versed in modern scientific and practical dairy husbandry. The cheese factory, dairy and food inspectors herein provided for shall be expert cheese makers, skilled in the technical work of cheese factories, competent judges of cheese factory products and versed in modern scientific and practical dairy husbandry. The chief food inspector shall be experienced in the modern grocery business. The assistant chemist shall be a

Digitized by Google

competent analytical chemist and shall devote his time exclusively to the work of the commission. The annual salary of the second assistant commissioner shall be sixteen hundred dollars; the annual salary of the assistant chemist, of the creamery, dairy and food inspectors and of the chief food inspector shall be each twelve hundred dollars; the compensation of each of the cheese factory, dairy and food inspectors shall be one hundred dollars per month. The aforesaid salaries and compensation shall be paid in the same manner as is provided by law for the payment of salaries of other state officers and employes. There shall also be paid to the second assistant commissioner and to each of the agents or inspectors and assistant chemist herein provided for, their necessary and actual expenses incurred in the discharge of their official duties, on the approval of the dairy and food commissioner and the governor, of verified and itemized accounts therefor.

Powers. Section 1410ac. (Sec. 2, ch. 390, 1905.) The officers designated in section 1 of this act shall have all the powers that are conferred by law upon any agent, inspector or assistant of the dairy and food commissioner.

Secretary; assistant chemist; cheese factory and creamery inspectors. Section 1410—1. (Ch. 386, 1907.) In addition to the officials and appointees otherwise provided by law for the dairy and food commission, the dairy and food commissioner may, with the advice and consent of the governor, appoint one secretary; one assistant chemist; one cheese factory, dairy and food inspector; and one creamery, dairy and food inspector, whose duties shall be to assist in promoting the work of the dairy and food commissioner in the manner herein provided and in such way as may be required by the dairy and food commissioner in the enforcement of the dairy and food laws. The duties of the cheese factory, dairy and food inspector, in addition to the general duties hereinbefore provided, shall be to inspect cheese factories, dairies, foods and drugs under the direction and supervision of the dairy and food commissioner. He shall be an expert cheese-maker, skilled in the technical work of cheese factories, a competent judge of cheese factory products and versed in modern scientific and practical dairy husbandry. The duties of the creamery, dairy and food inspector, in addition to the general duties hereinbefore provided, shall be to inspect creameries, dairies, foods and drugs under the direction and supervision of the dairy

Digitized by Google

and food commissioner. He shall be skilled in the technical work of creameries, a competent judge of creamery products and versed in modern scientific and practical dairy husbandry. The assistant chemist shall be a competent analytical chemist. The annual salary of the said assistant chemist shall be fifteen hundred dollars; the annual salary of the said secretary and of the creamery, dairy and food inspector shall be twelve hundred dollars each. The compensation of the cheese factory, dairy and food inspector shall be one hundred dollars per month. The aforesaid salaries and compensation shall be paid in the same manner as is provided by law for the payment of salaries of other state officers and employes. There shall also be paid to the assistant chemist and to each of the inspectors herein provided for, their necessary and actual expenses incurred in the discharge of their official duties, on the approval of the dairy and food commissioner and the governor, of verified and itemized accounts therefor, and the said officials shall have all the powers that are conferred by law upon any agent, inspector or assistant of the dairy and food commissioner.

Access to buildings; samples of food, etc.; stencils for cheese. Section 1410*b*. The commissioner, his agent or assistant shall have free access to any barn or stable where any cow is kept or milked, or to any factory, building, dairy or premises where any dairy product is manufactured, handled or stored, when the milk from such cow or such product is to be sold or shipped, and may enforce such measures as are necessary to secure perfect cleanliness in and around the same and of any utensil used therein, and to prevent the sale of milk from cows diseased or fed upon unwholesome food. Either of them may enter any place or building in which there is reason to believe that any food, drink or drug is made, prepared, sold or offered for sale, and may open any package or receptacle of any kind containing, or which is supposed to contain, any article of food, drink or drug, and examine or analyze the contents thereof. Any such article or a sample thereof may be seized or taken for the purpose of having it analyzed; but if the person from whom it is taken shall so request, at the time of taking, the officer shall then and in the presence of such person securely seal up two samples of such article, one of which shall be for analysis under the direction of the commissioner, the other shall be delivered to the person from whom the sample or article was obtained. Said commis-

Digitized by Google

sioner shall adopt a uniform stencil, bearing a suitable device or motto, a number and the words "Wisconsin full cream cheese" and a space for a number, and upon proper application therefor and under such regulations as to the custody and use thereof as he may prescribe, issue the same, with the proper number inserted, to the proprietor or manager of any cheese factory in this state; he shall enter in a book kept for that purpose the name, location and number of each factory using such stencil, no number being duplicated, and the name of the person thereat authorized to use the same.

Submission of articles for analysis; evidence. Section 1410*c*, Statutes of 1898. The state board of health, medical officers of local boards of health, town and village boards or common councils may submit to the dairy and food commissioner samples of water or other drinks, of food or drugs for analysis, and the same shall be examined and reports made of the analysis thereof to the body or officer submitting the same as soon as practicable; such reports shall fully specify the results of the analysis and be signed by such commissioner; they shall be accepted in all courts and places as prima facie evidence of the properties or condition of the articles analyzed.

Questions of evidence as to sealing and analysis. If there is contradictory evidence concerning the sufficiency of the seal of a sample, and the credibility of the witnesses for the prosecution is submitted to the jury, the defendant is not injured. If there is evidence that a few drops of carbolic acid were added to a sample of milk, and it is submitted to the jury as a question of fact whether this would change the character of the milk, make the analysis impossible or difficult, or in any way injuriously affect the sample for the purpose of analysis. the defendant has no cause of complaint: Commonwealth v. Spear, 143 Mass., 172.

It is observed of a statute similar to this and the preceding paragraph that it is intended to secure a fair examination and analysis by providing the defendant with the means of making an analysis of a portion of the same specimen which the state has analyzed. If the sample is not saved, or not saved in proper condition, he has no means of showing that his evidence, if any he has as to the quality of the milk, applies to that with reference to which the government witnesses have testified. It cannot be said that a portion reserved is sealed when wax is merely placed on the top of the cork and not extended over the mouth of the bottle, thus making it air-tight, if it is shown that the character of the milk will be affected by the air: Commonwealth v. Lockhardt, 144 Mass., 132.

Where the article analyzed has not been taken under the statute the competency of evidence is to be determined by the common law, and the testimony of any person who had sufficient skill to analyze it, and who has analyzed some which was proven to have been sold by the defendant, is admissible: Commonwealth v. Holt, 146 Mass., 38.

Digitized by Google

Farmers' institutes; expense of analyses. Section 1410*d*. (As amended by ch. 206, 1907) The governor may authorize the commissioner or his assistants, chemists or inspectors, when not engaged in the performance of other official duties, to give such aid in farmers' institutes, dairy and food and farmers' conventions and the agricultural department of the state university as may be deemed advisable. For the necessary expenses of making the analyses contemplated in the foregoing sections the commissioner may incur an annual expense of not to exceed * * * one thousand dollars, the accounts for which, when verified and itemized. and approved by the governor shall be audited by the secretary of state.

Wrongful use of milk, etc.; fraudulent accounts. Section 1494a. (As amended by ch. 306, 1907.) Any butter or cheese manufacturer who shall knowingly use or allow any other person to use for the benefit of himself or any other person than he who is entitled to the benefit thereof any milk or cream from the milk brought to him, without the consent of the owner thereof, or who shall refuse or neglect to keep or cause to be kept a correct account (which shall be open to the inspection of any person furnishing milk to him and to the dairy and food commissioner of this state, his chemists, assistants, inspectors and agents) of the amount of milk daily received, or to the number of pounds of butter, and the number and aggregate weight of cheese made by him each day, or of the number of cheese cut or otherwise disposed of and the weight of each, shall * * * be guilty of a misdemeanor and upon conviction be punished by a fine not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than sixty days.

Standard measures for Babcock milk and cream test. Section 1494aa. (Sec. 1, ch. 43, 1903, as amended by ch. 99, 1907.) In the use of the Babcock test, the standard milk measures or pipettes shall have a capacity of 17.6 cubic centimeters, and the standard test tubes or bottles for milk shall have a capacity of 2 cubic centimeters for each 10 per cent marked on the necks thereof; cream shall be tested by weight and the standard unit for testing shall be 18 grams, and it is hereby made a misdemeanor to use any other standards of milk or cream measure where milk or cream is purchased by or furnished to creameries or cheese factories and where the value of said milk or cream is determined by the per cent of butter fat contained in

Digitized by Google

the same, or wherever the value of milk or cream is determined by the per cent of butter fat contained in the same by the Babcock test.

2. In sampling cream or milk from which composite tests are to be made to determine the per cent of butter fat contained therein, no such sample or sampling shall be lawful unless a sample be taken from each weighing and the quantity thus used shall be proportioned to the total weight of the cream or milk tested.

3. Every person, corporation or company operating a creamery when using the Babcock test as a standard to determine the value of any milk or cream received or bought by such person, corporation or company to be manufactured into butter, shall, when paying for such milk or cream, include in every statement or check issued to any patron in payment thereof a statement of the number of pounds of butter fat and the number of pounds of butter made for the period of time for which payment is made.

Sale of false measure a misdemeanor. Section 1494ab. (Sec. 2, ch. 43, 1903.) Any manufacturer, merchant, dealer or agent in this state who shall offer for sale or sell a milk pipette or measure, test tube or bottle which is not correctly marked or graduated as herein provided shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 4 of this act.

To under-read or over-read unlawful. Section 1494ac. (Sec. 3, ch. 43, 1903, and Sec. 1, ch. 99, 1905.) It shall be unlawful for the owner, manager, agent or any employee of a cheese factory, creamery, or condensed milk factory to falsely manipulate or under-read or over-read the Babcock test or any other contrivance used for determining the quality or value of milk or cream or to make any false determination by said Babcock test or otherwise.

Penalty for violating either of the preceding sections. Section 1494ad. (Sec. 4, ch. 43, laws of 1903, as amended by ch. 99, laws of 1905.) Whoever shall violate any of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each and every offense, or be imprisoned in the county jail not less than thirty days nor more than sixty days.

Digitized by Google

To prevent the adulteration of malted liquors.

CHAPTER 393, 1909.

SECTION 1. There are added to the statutes three new sections to read: Section 1557s. No person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, shall expose or offer for sale or sell any malted liquors which do not conform to the legal definitions and standards established by section 1557t unless each package, barrel, keg or bottle containing the same shall have plainly marked thereon in the English language in black ink with type not smaller than eight point bold faced Gothic capitals the correct names of, and quantity of each ingredient used in the manufacture of such malted l'quors. This section shall not apply to malted liquors shipped out of the state.

Section 1557t. In all prosecutions arising under the provisions of this statute for the manufacture or sale of adulterated, misbranded or otherwise unlawful malted l'quors, the following definitions and standards shall be the legal definitions and standards, to-wit:

(1) Malt liquor is a beverage made by the alcoholic fermentation of an infusion, in potable water, of barley malt and hops, with or without unmalted grains or decorticated and degerminated grains.

(2) Beer is a malt liquor produced by bottom fermentation.

(3) Lager beer, stored beer, is beer wh'ch has been stored for a sufficient period to produce approximate end fermentation.

(4) Malt beer is beer made of an infusion, in potable water, of barley malt and hops.

(5) Ale is a malt liquor produced by top fermentation.

(6) Porter and stout are varieties of malt liquors made in part from highly roasted malt.

Section 1557u. Any person, who shall violate any of the provisions of sections 1557s and 1557t, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment.

SECTION 2. This act shall take effect and be in force from and after July 1, 1909.

Digitized by Google

Relating to the prevention of the adulteration of and fraud in the sale of linseed oil, turpentine, white lead, oxide of zinc, and linseed oil compounds.

CHAPTER 352, 1909.

SECTION 1. There is added to the statutes a new section to read: Section 1636 l. No person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, shall sell, offer or expose for sale or have in possession with intent to sell as and for "raw flaxseed oil" or "raw linseed oil" any oil unless the same is obtained from the seeds of the flax plant and unless the same fulfills all the requirements for linseed oil laid down in the eighth decennial revision of the United States pharmacopoeia; or as and for "boiled linseed oil" or "boiled flaxseed oil" any oil unless the same shall have been prepared by heating pure raw linseed oil with or without the addition of not to exceed four (4) per cent of drier to a temperature not less than two hundred twenty-five (225) degrees Fahrenheit. And for the purpose of this act, it shall also be deemed a violation of this act if said boiled linseed oil does not conform to the following requirements: First, its specific gravity at sixty degrees Fahrenheit must be not less than nine hundred thirty-five thousandths (0.935) and not greater than nine hundred forty-five thousandths (0.945); second, its saponification value (Koettstorfer figure) must not be less than one hundred eighty-six (186); third, its iodine number must not be less than one hundred sixty (160); fourth, its acid value must not exceed ten (10); fifth, the volatile matter expelled at two hundred twelve (212) degrees Fahrenheit must not exceed one-half of one per cent; sixth, no mineral or other foreign oil or free rosin shall be present, and the amount of unsaponifiable matter as determined by standard methods shall not exceed two and five-tenths (2.5) per cent; seventh, the film left after the flowing the oil over glass and allowing it to drain in a vertical position must dry free from tackiness in not to exceed twenty hours, at a temperature of about seventy degrees Fahrenheit.

2. Nor shall any person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, sell, expose or offer for sale or have in possession with intent to sell, any raw or boiled linseed oil unless it is so done under its true name, and each tank car, tank, barrel, keg, can or vessel of such oil has distinctly and durably painted, stamped, stenciled or marked thereon the true name

Digitized by Google

of such oil in ordinary bold faced capital letters, not less than five-line pica in size, in the words, "Pure Linseed Oil—Raw" or "Linseed Oil—Boiled," as the case may be, and the name and address of the manufacturer thereof.

3. Linseed oil compounds designed to take the place of raw or boiled linseed oil, whether sold, offered or exposed for sale, under invented proprietary names or titles, or otherwise, shall bear conspicuously upon the containing receptacle in which the same is kept for sale or sold, in ordinary bold faced capital letters not less than five-line pica in size, the word "Compound," followed immediately with the true distinctive names of the actual ingredients in the order of their greater preponderance, in the English language, in plain legible type of the same style, not less than three-line pica in size, in continuous list with no intervening matter of any kind and shall also bear the name and dress of the manufacturer.

4. Nor shall any person by himself, his servant, or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, sell, offer or expose for sale or have in possession with intent to sell as and for dry white lead any substance other than basic carbonate of lead or basic sulphate of lead; nor shall any person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, sell, offer or expose for sale or have in possession with intent to sell as and for white lead in oil, any product other than basic carbonate of lead ground in pure linseed oil or basic sulphate of lead ground in pure linseed oil; nor shall any person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, sell, offer or expose for sale or have in possession with intent to sell any basic carbonate of lead ground in linseed oil, unless each keg, can or other receptacle containing the same has distinctly and durably painted, stamped, stenciled or marked thereon the words, "white lead, basic carbonate, in oil," and the name and address of the manufacturer or jobber thereof; nor shall any person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, sell, offer or expose for sale or have in possession with intent to sell any basic sulphate of lead ground in linseed oil, unless each cask, keg or other receptacle containing the same has distinctly and durably painted, stamped, stenciled or marked thereon the words "white lead, basic sulphate, in oil," and the name and address of the manufacturer or jobber thereof; nor shall any

Digitized by Google

person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, sell, offer or expose for sale or have in possession with intent to sell as and for dry oxide of zinc, or zinc oxide, or zinc white, any substance other than commercially pure oxide of zinc; nor shall any person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, sell, offer or expose for sale, or have in possession with intent to sell as and for oxide of zinc in oil, or zinc oxide in oil, or zinc white in oil, any product other than commercially pure oxide of zinc ground in pure linseed oil; nor shall any person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, sell, offer or expose for sale, or have in possession with intent to sell any oxide of zinc ground in linseed oil, unless each keg, can or other receptacle, containing the same has distinctly and durably painted, stamped, stenciled or marked thereon the words "oxide of zinc in oil," or "zinc oxide in oil," or "zinc white in oil," and the name and address of the manufacturer or jobber thereof.

5. Nor shall any person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, sell, offer or expose for sale, or have in possession with intent to sell as and for turpentine, spirit of turpentine or oil of turpentine, any article except pure oil of turpentine distilled from the natural gum, dip or scrape of pine trees, and unmixed with kerosene or other mineral oil or other foreign substance; nor shall any person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, sell, offer or expose for sale or have in possession with intent to sell as and for wood turpentine or wood spirit of turpentine any article except the distillates and spirits prepared directly from or by the distillation of the wood of pine trees, and unmixed with kerosene or other mineral oil or other foreign substance; nor shall any person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, sell, offer or expose for sale, or have in possession with intent to sell any oil of turpentine or wood spirit of turpentine unless it is so done under its true name, and each tank car, tank, barrel, keg, can or vessel of such oil has distinctly and durably painted, stamped, stenciled or marked thereon the true name of such oil in ordinary bold faced capital letters, not less than five-line pica in size the words "Oil of Turpentine" or

Digitized by Google

"Wood spirit of Turpentine" as the case may be, and the name and address of the manufacturer or jobber thereof.

6. It is hereby made the duty of the dairy and food commissioner, by himself or by his assistants, chemists, inspectors or agents to see that the provisions of this act are enforced, and personally or by said assistants, chemists, inspectors or agents to inspect any flaxseed oil or linseed oil or oil of turpentine or wood spirit of turpentine or white lead, dry or in oil, or zinc oxide, dry or in oil, made or offered or exposed for sale or had in possession with intent to sell in this state, and any tank car, tank, barrel, keg, can or any vessel containing the same in this state which he may suspect or have reason to believe, fails to comply with the provisions of this act, and to prosecute or cause to be prosecuted, any person or firm whom he may suspect or have reason to believe may be violating any of the provisions of this act, which prosecution shall be conducted by the district attorney in the same manner as is now provided in case of the violation of the laws relating to the production, manufacture and sale of dairy products and to the adulteration of food, drinks, condiments and drugs, and for the purposes of this act and the enforcement thereof, the dairy and food commissioner, his assistants, chemists, inspectors and agents shall have all the powers conferred by the statutes upon him or them or any of them for the enforcement of the dairy and food and drug laws of the state, in so far as the same may be applicable thereto. The dairy and food commissioner shall have the power to appoint, with the approval of the governor, special counsel to prosecute or assist in prosecution of any case arising under the provisions of this act. All fines collected in prosecutions begun or caused to be begun by the dairy and food commissioner or any of his assistants, chemists, inspectors or agents shall be paid into the state treasury.

7. Any person who shall violate any of the provisions of this act or any person who shall obstruct the dairy and food commissioner of this state, his assistants, chemists, inspectors or agents in the performance of his or their duty in the enforcement of the provisions of this act by refusing him entrance to any place he is authorized to enter or by refusing to deliver to him a sample of any article or articles described in this act, that is sold, or offered or exposed for sale or had in possession with intent to sell by the person to whom request therefor is made, if the value thereof is tendered, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars or more than one hundred dollars or by im-

Digitized by Google

prisonment in the county jail not less than thirty days nor more than four months.

8. To assist in the analysis of linseed oil, turpentine, white lead and oxide of zinc herein required, the dairy and food commissioner may, with the advice and consent of the governor, appoint an assistant chemist, who shall be paid in the same manner as is provided by law for the payment of salaries of other state officers and employees, an annual salary of $1,200. There shall also be paid to said assistant chemist his necessary and actual expenses incurred in the discharge of his official duties on the approval of the dairy and food commissioner and the governor of verified and itemized accounts therefor. When not engaged in the analysis of the articles as herein required, the said assistant chemist shall perform such other duties as may be required by the dairy and food commissioner in the enforcement of the dairy and food and drug laws of the state.

SECTION 2. Sections 1636—91 to 1636—95, inclusive, of the statutes, being chapter 234 of the laws of 1899 entitled "An act to prevent the adulteration of and deception in the sale of flaxseed or linseed oil," are hereby repealed.

SECTION 3. This act shall take effect and be in force from and after its passage and publication, provided that the provisions of this act in relation to the labeling of turpentine, white lead, oxide of zinc and linseed oil compounds, shall not take effect until January 1, 1911.

Penalty for false labeling cheese. Section 4438*g*. Any person who shall sell, offer for sale, ship or consign cheese labeled with a false brand or label as to the quality of the article, or shall use any stencil or label furnished by the dairy and food commissioner of this state and bearing the words "Wisconsin full cream cheese," otherwise than upon the bandage on the side of full cream cheese and upon the package containing the same, shall be punished by a fine of not more than fifty dollars nor less than twenty-five dollars.

Sale of unwholesome provisions. Section 4599, Statutes of 1898. Any person who shall knowingly sell any kind of diseased, corrupted or unwholesome provisions, whether for meat or drink, without making the same fully known to the buyer, shall be punished by imprisonment in the county jail not more than six months or by fine not exceeding one hundred dollars.

Sale of adulterated articles; definitions. Section 4600. (As amended by ch. 202, 1909.) Any person who shall, by himself,

Digitized by Google

his servant or agent, or as the servant or agent of any other person, sell, exchange, deliver or have in his possession, with intent to sell, exchange, offer for sale or exchange any drug or article of food which is adulterated, or any candy containing intoxicating liquor, shall be fined not less than twenty-five dollars, nor more than one hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than four months. The term "drug," as used in this section, shall include all medicines for internal or external use, antiseptics, disinfectants and cosmetics. The term "food," as used herein shall include all articles used for food or drink or condiment by man, whether simple, mixed or compound, *and all articles used or intended for use as ingredients in the composition thereof or in the preparation thereof.*

Agent. An agent who sells for a non-resident principal is within the statute: Meyer v. State, 54 Ohio St., 242.

Pleading; ignorance. It need not be alleged that the article sold was to be used as food. Ignorance of the adulteration is not a defense: State v. Kelly, 54 Ohio St., 166.

Adulteration, what is. Section 4601. (As amended by ch. 202, 1909.) An article shall be deemed to be adulterated within the meaning of the preceding section:

1. In the case of drugs: First, if, when sold, or offered or exposed for sale or had in possession with intent to sell, under or by a name recognized in the United States pharmacopoeia *or national formulary*, it differs from the standard of strength, quality or purity laid down in the latest * * * edition thereof, *current at the time when such drug is sold or offered or exposed for sale or had in possession with intent to sell;* second, * * * if its strength, quality or purity falls below the professed standard under which it is sold; *third, if it contains wood alcohol except when intended for external use only and so labeled.*

2. In the case of food: First, if any substance or substances have been mixed with it, so as to lower or depreciate or injurious affect its strength, quality or purity; second, if any inferior or cheaper substance or substances have been substituted wholly or in part for it; third, if any valuable or necessary ingredient has been wholly or in part abstracted from it, *or if it is below that standard of quality, strength or purity represented to the purchaser or consumer;* fourth, if it is an imitation of, or sold *or offered or exposed for sale* under the name of another article; fifth, if it consists *of or is manufactured,* wholly or in part, * * * *from a diseased, contami-*

Digitized by Google

nated, filthy, decomposed, tainted or rotten animal or vegetable substance or any animal or vegetable substance produced, stored, transported, or kept in a condition that tends to render the article diseased, contaminated or unwholesome, or if it is any part of the product of a diseased animal, or the product of an animal that has died otherwise than by slaughter; sixth, if it is *mixed,* colored, coated, polished, * * * powdered, *or stained,* whereby damage or inferiority is concealed, *or so that it tends to deceive or mislead the purchaser or consumer,* or if by any means it is made to appear better or of greater value than it really is, *or if it is colored or flavored in imitation of the genuine color or flavor of another substance;* seventh, of it contains any added substance or ingredient which is poisonous, injurious, or deleterious to health, or any deleterious substance not a necessary ingredient in its manufacture; provided, that * * * *any article of food which is not adulterated under the provisions of the fourth, fifth, sixth and seventh specifications of this section, and which does not contain any filler or ingredient which debases without adding food value, shall not be deemed adulterated in the case of mixtures or compounds sold under their own distinct names or under coined names, if the same be so labeled, branded or tagged as plainly to show their true character and composition.* And provided further, that nothing in this act shall be construed as requiring or compelling proprietors or manufacturers of proprietary foods to disclose their trade formulas, except as far as may be necessary to secure freedom from adulteration, imitation or fraud.

Imitation. The sale of liquid chicory and coffee as "liquid coffee" is within the statute: State v. Dreher, 55 Ohio St., 115.

Deceitful imitations an offense against society. "We are of the opinion that it is within the power of a state to exclude from its markets any compound manufactured in another state, which has been artificially colored or adulterated so as to cause it to look like an article of food in general use, and the sale of which may, by reason of such coloration or adulteration, cheat the general public into purchasing that which they may not intend to buy. The constitution of the United States does not secure to anyone the privilege of defrauding the public. The deception against which the statute of Massachusetts is aimed is an offense against society; and the states are as competent to protect their people against such offenses or wrongs as they are to protect them against crimes or wrongs of more serious character. And this protection may be given without violating any right secured by the national constitution, and without infringing the authority of the general government. A state enactment forbidding the sale of deceitful imitations of articles of food in general use among the people does not abridge any privilege secured to citizens of the United States, nor, in any just sense, interfere with the freedom of commerce among the several states. Plumley v. Massachusetts, 155 U. S., 461.

Imitation by selection of material the same as by use of a dye. "If the article is in imitation of yellow butter, it matters not whether such imi-

Digitized by Google

tation is brought about by the addition of a dye or by the selection of ingredients. . . . If one forming a compound of several ingredients knowingly select and use an ingredient which imparts to the compound the color of yellow butter, he having choice of ingredients, he will have made his compound in imitation of yellow butter just as well as if he selected a dye." 134 Wis., 156–167.

Scope of statute. Whisky, being recognized as a drug in the pharmacopœia and its strength and purity being there given, is a drug within the meaning of the statute. The law is not limited in its application to the sale of drugs by druggists and pharmacists, nor to sales for medicinal or pharmaceutical use, but extends to all persons without regard to their vocations, and makes no distinctions on account of the use intended to be made of the article: State v. Hutchinson, 56 Ohio St., 82.

Pleading. The provision in the preceding paragraph applies to it and the next preceding one, and is not limited to any particular offense defined in them. Hence, a negative averment of the facts within the proviso need not be made in charging an offense; the facts may be proven under a plea of not guilty: State v. Hutchinson, 55 Ohio St., 573.

Canned goods, labels on. Section 4601*a*, Statutes of 1898. (As amended by chapter 104, laws of 1905.) Any person who shall, himself, or by his servant or agent, or as the servant or agent of any other person, pack, can or preserve within this state, for use or consumption therein, fruits, vegetables, meats, fish or shell-fish, or who shall sell, exchange, deliver or have in his possession with intent to sell, or exchange or expose for sale, or offer for sale or exchange for use or consumption within this state such canned articles containing saccharin, formaldehyde, sulphurous acid or sulphites, salicylic acid, or salicylates or any substance, article or ingredient other than sugar, salt, vinegar or spices, possessing a preservative character or action, or any copper compound or other artificial coloring, or any bleaching compound, or any article injurious to health; or any person who shall, himself, or by his servant or agent, or as the servant or agent of any other person, pack, can or preserve within this state for use or consumption therein, fruits, vegetables, meats, fish or shell-fish, or who shall sell, exchange, deliver, or have in his possession with intent to sell or exchange, or expose for sale, or offer for sale or exchange for use or consumption within this state, such canned articles, unless each can containing such articles shall bear a label on which shall be printed the true name of the contents and the name and address of the producer or packer, canning or preserving the same, or the dealer who sells the same, shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars, nor more than one hundred dollars or be imprisoned in the county jail not less than thirty days nor more than sixty days.

Digitized by Google

Label on baking powder. Section 4601b. (As amended by ch. 77, 1907.) Any person who shall, by himself, his servant or agent or by the servant or agent of any other person, make or manufacture baking powder or any mixture or compound intended for use as a baking powder, or sell, exchange or deliver, or have in his possession with the intent to sell or exchange, or expose or offer for sale or exchange such baking powder, or any mixture or compound intended for use as a baking powder, * * * unless each receptacle or package in which the same is kept for sale or sold, has securely affixed in a conspicuous place upon the side thereof, and plainly separated from other reading matter, a white or light colored label, upon the outside face of which label shall be printed in the English language with black ink, in type not smaller than eight point, bold-faced, gothic capitals, the name and address of the manufacturer of such baking powder, and the words: "This baking powder is composed of the following ingredients and none other," and immediately thereafter upon the same label, in color, style and manner above specified, the name of each ingredient contained in such baking powder, using the name by which each ingredient is commonly known, shall be punished as provided in the next preceding section, provided that for the purposes of this act, alum in any form or shape or any aluminum salt shall be designated by the term alum.

Validity. A statute which provides that no person shall sell any lard or any article intended for use as lard which contains any ingredient but the pure fat of healthy swine, under any label bearing the words "refined," "pure," "family," unless every package in which the article is sold is marked "compound lard," has been sustained as valid by the supreme court of Iowa: State v. Snow, 47 N. W. Rep., 777.

In Minnesota a statute which makes it a misdemeanor to manufacture for sale within that state, or to sell or offer to do so, baking powder containing alum, unless each package thereof is labeled, "This baking powder contains alum," has been sustained: Stoltz v. Thompson, 46 N. W. Rep., 410.

Misbranding of articles of food. Section 4601aa. (Ch. 173, 1907.) Any person, firm or corporation by himself, officer, servant or agent, or as the officer, servant or agent of any other person, firm or corporation, who shall manufacture or solicit or take orders for delivery, or sell, exchange, deliver or have in possession with the intent to sell, exchange or expose, or offer for sale or exchange any article of food within the meaning of section 4600, statutes of 1898, which is misbranded within the meaning of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor

Digitized by Google

more than one hundred dollars, or by imprisonment in the county jail not less than ten days nor more than sixty days. The term "misbranded," as used herein, shall apply to articles of food or articles which enter into the composition of food, which, or the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular; or if in package form, and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package; and to any food product which is falsely branded as to the state, territory or country in which it is manufactured or produced. Any article of food shall also be deemed to be misbranded if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package. The term "label," as used in this section and in section 4601, statutes of 1898, or in any other section of these statutes, relating to the adulteration or misbranding of food, unless otherwise specifically described and provided therein, shall apply to any printed, pictorial or other matter upon or attached to any package of a food product or any container thereof.

It is hereby made the duty of the dairy and food commissioner of this state, by himself, or assistants, chemists, inspectors and agents, to see that the provisions of this section are enforced and for this purpose all the powers conferred upon the said commissioner, his assistants, chemists, inspectors and agents, by section 1410a, 1410b, 1410d, of the statutes of 1898, or by any other provision of these statutes are hereby conferred upon said dairy and food commissioner, his assistants, chemists, inspectors and agents, so far as the same may be applicable.

Syrups, molasses, glucose mixtures; required labels: wording, color, type. Section 4601—1a. (Ch. 152, 1905, as amended by ch. 557, 1907.) No person, firm or corporation, by himself, officer, servant or agent, or as the officer, servant or agent of any other person, firm or corporation, shall sell, offer or expose for sale or have in his possession with intent to sell any syrup, maple syrup, sugar-cane syrup, sugar syrup, refiners' syrup, sorghum syrup, molasses or glucose, unless the same be true to the name under which it is sold and as defined in the standards of purity for food products as * * * latest promulgated by the United States * * * Secretary of Agriculture, and unless the barrel, cask, keg, can, pail or * * * other original container, containing the same be distinctly

Digitized by Google

branded or labeled with the true name of its contents, as defined in the above named standards; and no person, firm or corporation, by himself, officer, servant or agent, or as the officer, servant or agent of any other person, firm or corporation, shall sell, offer or expose for sale or have in his possession with intent to sell any syrup, maple syrup, sugar-cane syrup, sugar syrup, refiners' syrup, sorghum syrup or molasses, mixed with glucose, unless the * * * barrel, cask, keg, can, pail, or * * * other original container, containing the same be distinctly branded or labeled * * * so as to plainly show the true name of each and all of the ingredients composing such mixture, as follows:

First: In case said mixture shall contain glucose in a proportion not to exceed 50 per cent. by weight, it shall be labeled and sold as "Maple Syrup and Glucose," "Sugar-Cane Syrup and Glucose," "Sugar Syrup and Glucose," "Refiners' Syrup and Glucose," "Sorghum Syrup and Glucose," or "Molasses and Glucose," as the case may be;

Second: In case said mixture shall contain glucose in a proportion exceeding 50 per cent and not more than 75 per cent by weight, it shall be labeled and sold as "Glucose and Maple Syrup," "Glucose and Sugar-Cane Syrup," "Glucose and Sugar Syrup," "Glucose and Refiners' Syrup," "Glucose and Sorghum Syrup," "Glucose and Molasses," as the case may be;

Third: In case said mixture shall contain glucose in a proportional exceeding 75 per cent. by weight, it shall be labeled and sold as "Glucose flavored with Maple Syrup," "Glucose flavored with Sugar-Cane Syrup," "Glucose flavored with Sugar Syrup," "Glucose flavored with Refiners' Syrup," "Glucose flavored with Sorghum Syrup," "Glucose flavored with Molasses," as the case may be. The labels provided for in this section shall be printed in type not smaller than eight-point Brevier caps and shall bear the name and address of the manufacturer or dealer. In mixtures in which glucose shall be mixed with any syrup or molasses in the proportion of hot more than 50 per cent. by weight of the total product, the word "Glucose" shall be printed in type of the same size and style and the same color as may be used in printing the name of any syrup or molasses with which the glucose may be mixed, and said mixture shall be so labeled and sold. In mixtures in which glucose shall be mixed with any syrup or molasses in the proportion of not more than 75 per cent. and not less than 50 per cent. by weight, the word "Glucose" shall be printed in the same color and in type of the same style but one-third larger than the size of the letters which may be used in the printing of the name of any syrup

Digitized by Google

or molasses with which it may be mixed, and such mixture shall be so labeled and sold. In all mixtures in which glucose is used in the proportion of more than 75 per cent. by weight, the name of the syrup or molasses which is mixed with the glucose for flavoring purposes and the words showing that said syrup or molasses is used as a flavoring, as provided in this section, shall be printed on the label of each container of such mixture in the same color, and in the same style of type but not larger than ten-point caps. * * * The mixtures or syrups designated in this section shall have no other designation or brand than herein required that represents or is the name of any article which contains a saccharine substance; and all brands or labels required shall be an inseparable part of the general or distinguishing label, and the general or distinguishing label shall be the principal and conspicuous sign under which it is sold; nor shall any of the aforesaid glucose, syrups, molasses or mixtures contain any substance injurious to health, nor any other article or substance otherwise prohibited by law in articles of food.

Maple syrup mixtures; required labels: wording, color, type. Section 4601—2a. (Ch. 557, 1907.) No person, firm or corporation, by himself, officer, servant or agent, or as the officer, servant or agent of any other person, firm or corporation, shall solicit or take orders for delivery, or sell, exchange, deliver or have in possession with intent to sell, exchange or expose, or offer for sale or exchange, any maple syrup mixed with sugar-cane syrup, sugar syrup, refiners' syrup, sorghum syrup or molasses, unless the same be labeled and sold so as to show the true name of each and all of the ingredients contained therein and unless each barrel, cask, keg, can, pail or other original container, containing the same, be distinctly branded or labeled and sold so as to plainly show the true name of each and all of the ingredients composing such mixture, as follows:

First: If said mixture shall contain 50 per cent. or more by weight of maple syrup, it shall be labeled and sold as "Maple Syrup and Sugar-Cane Syrup," "Maple Syrup and Sugar Syrup," "Maple Syrup and Refiners' Syrup," "Maple Syrup and Sorghum Syrup," or "Maple Syrup and Molasses," as the case may be;

Second: If said mixture shall contain not less than 25 per cent., nor more than 49 per cent., by weight, of maple syrup, it shall be labeled and sold as "Sugar-Cane Syrup and Maple Syrup," "Sugar Syrup and Maple Syrup," "Refiners' Syrup

Digitized by Google

and Maple Syrup," "Sorghum Syrup and Maple Syrup," or "Molasses and Maple Syrup," as the case may be:

Third: If said mixture shall contain less than 25 per cent., by weight, of maple syrup, it shall be labeled and sold as "Sugar-Cane Syrup flavored with Maple Syrup," "Sugar Syrup flavored with Maple Syrup," "Refiners' Syrup flavored with Maple Syrup," "Sorghum Syrup flavored with Maple Syrup," or "Molasses flavored with Maple Syrup," as the case may be.

All labels provided for in this section shall be printed in English, in type not smaller than eight-point Brevier caps and shall bear the name and address of the manufacturer or dealer. In mixtures in which maple syrup shall be mixed with molasses or any or either of the syrups designated in this section in the proportion of not less than 50 per cent. by weight of the total product, the word "Maple" shall be printed in type of the same size and style and in the same color as may be used in the printing of the name of any other syrup or molasses with which the maple syrup may be mixed, and said mixture shall be so labeled and sold. In mixtures in which maple syrup shall be mixed with molasses or any or either of the syrups designated in this section, in the proportion of not less than 25 per cent. and not more than 49 per cent., by weight of the total product, the word "Maple" shall be printed in the same color, and in type of the same style, but not larger than two-thirds of the size, of the letters which may be used in printing the name of any syrup or molasses with which maple syrup may be mixed, and such mixture shall be so labeled and sold. In all cases in which maple syrup shall be mixed with any of the syrups designated in this section, in the proportion of less than 25 per cent., by weight of the total product, the word "Maple" and the words showing it to be used as a flavor, as provided in this section, shall be printed on the label of each container of such mixture in the same color and in the same size and style of type, but not larger than ten-point Brevier caps. The mixtures or syrups designated in this section shall have no other designation or brand than herein required that represents or is the name of any article which contains a saccharine substance; and all brands or labels required shall be an inseparable part of the general or distinguishing label, and the general or distinguishing label shall be the principal and conspicuous sign under which it is sold; not shall any of the aforesaid glucose, syrups, molasses or mixtures contain any substance injurious to health, nor any other article or substance otherwise prohibited by law in articles of food.

Digitized by Google

Violations of 4601—1a and 4601—2a; penalty. Section 4601—3a. (Ch. 557, 1907.) Whoever shall do any of the acts or things prohibited, or neglect, or refuse, to do any of the acts or things required by this act, or in any way violate any of the provisions of this act shall * * * be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten days nor more than sixty days.

Standards of purity for food products. Section 4601—4a. (Ch. 205, 1907.) In all prosecutions arising under the provisions of these statutes for the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food, drink, condiment or drug, the latest standards of purity for food products, established by the United States secretary of agriculture, shall be accepted as the legal standards, except in cases where other standards are specifically prescribed by the laws of this state.

Definitions and standards for food products.

CHAPTER 398, LAWS OF 1909.

SECTION 1. Section 4601—4a of the statutes is repealed.

SECTION 2. There is added to the statutes a new section to read: Section 4601—4a. In all prosecutions arising under the provisions of these statutes relating to the manufacture or sale of an adulterated, misbranded or otherwise unlawful article of food, the following definitions and standards for food products shall be the legal definitions and standards, to-wit:

1. Meat, flesh, is any clean, sound, dressed, and properly prepared edible part of animals in good health at the time of slaughter, and if it bears a name descriptive of its kind, composition, or origin, it corresponds thereto. The term "animals," as herein used, includes not only mammals, but fish, fowl, crustaceans, mollusks, and all other animals used as food.

Fresh meat is meat from animals recently slaughtered and properly cooled until delivered to the consumer.

Cold-storage meat is meat from animals recently slaughtered and preserved by refrigeration until delivered to the consumer.

Salted, pickled, and smoked meats are unmixed meats preserved by salt, sugar, vinegar, spices, or smoke, singly or in combination, whether in bulk or in suitable containers.

Digitized by Google

2. Manufactured meats are meats not included in subdivision 1, whether simple or mixed, whole or comminuted, in bulk or in suitable containers, with or without the addition of salt, sugar, vinegar, spices, smoke, oils, or rendered fat. If they bear names descriptive of kind, composition, or origin, they correspond thereto, and when bearing such descriptive names, if force or flavoring meats are used, the kind and quantity thereof are made known.

Sausage, sausage meat, is a comminuted meat from neat cattle or swine, or a mixture of such meats, either fresh, salted, pickled or smoked, with added salt and spices and with or without the addition of edible animal fats, blood and sugar, or subsequent smoking. It contains no larger amount of water than the meats from which it is prepared contain when in their fresh condition, and if it bears a name descriptive of kind, composition or origin, it corresponds to such descriptive name. All animal tissues used as containers, such as casings, stomachs, etc., are clean and sound and impart to the contents no other substance than salt.

Blood sausage is sausage to which has been added clean, fresh blood from neat cattle or swine in good health at the time of slaughter.

Canned meat is the cooked, fresh meat of fowl, neat cattle or swine, preserved in hermetically sealed packages.

Corned meat, cured meat, is meat, cured or pickled with dry salt or in brine, with or without the addition of sugar or syrup and saltpeter.

Potted meat is comminuted and cooked meat from those parts of the animal ordinarily used for food in the fresh state, with or without salt and spices, and enclosed in suitable containers hermetically sealed.

Meat loaf is a mixture of comminuted cooked meat, with or without spices, cereals, milk and eggs, and pressed into a loaf. If it bears a descriptive name, it corresponds thereto.

Mince, mince meat, is a mixture of not less than ten (10) per cent of cooked, comminuted meat, with chopped suet, apple and other fruit, salt and spices, and with sugar, syrup, or molasses, and with or without vinegar, fresh, concentrated, or fermented fruit juices or spirituous liquors.

3. Meat extract is the product obtained by extracting fresh meat with boiling water and concentrating the liquid portion by evaporation after the removal of fat, and contains not less than seventy-five (75) per cent of total solids, of which not over twenty-seven (27) per cent is ash, and not over twelve (12) per

Digitized by Google

cent is sodium chlorid (calculated from the total chlorin present), not over six-tenths (0.6) per cent is fat, and not less than eight (8) per cent is nitrogen. The nitrogenous compounds contain not less than forty (40) per cent of meat bases and not less than ten (10) per cent of kreatin and kreatinin.

Fluid meat extract is identical with meat extract except that it is concentrated to a lower degree and contains not more than seventy-five (75) and not less than fifty (50) per cent of total solids.

Bone extract is the product obtained by extracting fresh, trimmed bones with boiling water and concentrating the liquid portion by evaporation after removal of fat, and contains not less than seventy-five (75) per cent of total solids.

Fluid bone extract is identical with bone extract except that it is concentrated to a lower degree and contains not more than seventy-five (75) and not less than fifty (50) per cent of total solids.

Meat juice is the fluid portion of muscle fiber, obtained by pressure or otherwise, and may be concentrated by evaporation at a temperature below the coagulating-point of the soluble proteids. The solids contain not more than fifteen (15) per cent of ash, not more than two and five tenths (2.5) per cent of sodium chlorid (calculated from the total chlorin present), not more than four (4) nor less than two (2) per cent of phosphoric acid (P_2O_5), and not less than twelve (12) per cent of nitrogen. The nitrogenous bodies contain not less than thirty-five (35) per cent of coagulable proteids and not more than forty (40) per cent of meat bases.

Peptones are products prepared by the digestion of proteid material by means of enzymes or otherwise, and contain not less than ninety (90) per cent of proteoses and peptones.

Gelatin (edible gelatin) is the purified, dried, inodorous product of the hydrolysis, by treatment with boiling water, of certain tissues, as skin, ligaments, and bones, from sound animals, and contains not more than two (2) per cent of ash and not less than fifteen (15) per cent of nitrogen.

4. Lard is the rendered, fresh fat from hogs in good health at the time of slaughter, is clean, free from rancidity, and contains, necessarily incorporated in the process of rendering, not more than one (1) per cent of substances other than fatty acids and fat.

Leaf lard is lard rendered at moderately high temperatures from the internal fat of the abdomen of the hog, excluding that adherent to the intestines, and has an iodin number not greater than sixty (60).

Digitized by Google

Neutral lard is lard rendered at low temperatures.

5. Milk is the fresh, clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within eight days before and four days after calving, and contains not less than eight and one half (8.5) per cent of solids not fat, and not less than three (3) per cent of milk fat.

Modified milk is milk modified in its composition so as to have a definite and stated percentage of one or more of its constituents.

Skim milk is milk from which a part or all of the cream has been removed, and contains not less than nine (9) per cent of milk solids.

Pasteurized milk is milk that has been heated below boiling but sufficiently to kill most of the active organisms present and immediately cooled to fifty (50) degrees Fahrenheit or lower.

Sterilized milk is milk that has been heated at the temperature of boiling water or higher for a length of time sufficient to kill all organisms present.

Evaporated milk is milk from which a considerable portion of water has been evaporated, and contains not less than twenty-eight (28) per cent of milk solids, nor less than eight (8) per cent of milk fat.

Condensed milk is milk from which a considerable portion of water has been evaporated and to which sugar (sucrose) has been added, and contains not less than twenty-eight (28) per cent of milk solids, nor less than eight (8) per cent of milk fat.

Condensed skim milk is skim milk from which a considerable portion of water has been evaporated.

Butter milk is the product that remains when butter is removed from milk or cream in the process of churning.

Goat's milk, ewe's milk, et cetera, are the fresh, clean, lacteal secretions, free from colostrum, obtained by the complete milking of healthy animals other than cows, properly fed and kept, and conform in name to the species of animals from which they are obtained.

6. Cream is that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, is fresh and clean, and contains not less than eighteen (18) per cent of milk fat.

Evaporated cream, clotted cream, is cream from which a considerable portion of water has been evaporated.

Digitized by Google

7. Milk fat, butter fat, is the fat of milk and has a Reichert-Meissl number not less than twenty-four (24) and a specific gravity of not less than nine hundred five thousandths (0 905) at forty degrees (40) Centigrade compared with water at the same temperature.

8. Butter is the clean, non-rancid product made by gathering in any manner the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of the other milk constituents, with or without salt or added coloring matter, and contains not less than eighty-two and five tenths (82.5) per cent of milk fat.

Renovated butter, process butter, is the product made by melting butter and reworking, without the addition or use of chemicals or any substances except milk, cream, or salt, and contains not more than sixteen (16) per cent of water and at least eighty-two and five tenths (82.5) per cent of milk fat.

9. Cheese is the sound, solid, and ripened product made from milk or cream by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning or added coloring matter and contains, in the water-free substance, not less than fifty (50) per cent of milk fat.

Skim milk cheese is the sound, solid, and ripened product, made from skim milk by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.

Goat's milk cheese, ewe's milk cheese, et cetera, are the sound, ripened products made from the milks of the animals specified, by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.

10. Ice cream is a frozen product made from cream and sugar, with or without a natural flavoring, and contains not less than fourteen (14) per cent of milk fat.

Fruit ice cream is a frozen product made from cream, sugar, and sound, clean, mature fruits, and contains not less than twelve (12) per cent of milk fat

Nut ice cream is a frozen product made from cream, sugar, and sound, non-rancid nuts, and contains not less than twelve (12) per cent of milk fat.

11. Whey is the product remaining after the removal of fat and casein from milk in the process of cheese-making.

Kumiss is the product made by the alcoholic fermentation of mare's milk or cow's milk.

Digitized by Google

12. Grain is the fully matured, clean, sound, air-dry seed of wheat, maize, rice, oats, rye, buckwheat, barley, sorghum, millet, or spelt.

Meal is the clean, sound product made by grinding grain.

Flour is the fine, clean, sound product made by bolting wheat meal and contains not more than thirteen and one half (13.5) per cent of moisture, not less than one and twenty-five hundredths (1.25) per cent of nitrogen, not more than (1) per cent of ash, and not more than fifty hundredths (0.50) per cent of fibre.

Graham flour is unbolted wheat meal.

Gluten flour is the clean, sound product made from flour by the removal of starch, and contains not less than five and six tenths (5.6) per cent of nitrogen and not more than ten (10) per cent of moisture.

Maize meal, corn meal, Indian corn meal, is meal made from sound maize grain, and contains not more than fourteen (14) per cent of moisture, not less than one and twelve hundredths (1.12) per cent of nitrogen, and not more than one and six tenths (1.6) per cent of ash.

Rice is the hulled, or hulled and polished grain of *Oryza sativa.*

Oatmeal is meal made from hulled oats, and contains not more than twelve (12) per cent of moisture, not more than one and five tenths (1.5) per cent of crude fibre, not less than two and twenty-four hundredths (2.24) per cent of nitrogen, and not more than two and two tenths (2.2) per cent of ash.

Rye flour is the fine, clean, sound product made by bolting rye meal, and contains not more than thirteen and one half (13.5) per cent of moisture, not less than one and thirty-six hundredths (1.36) per cent of nitrogen, and not more than one and twenty-five hundredths (1.25) per cent of ash.

Buckwheat flour is bolted buckwheat meal and contains not more than twelve (12) per cent of moisture, not less than one and twenty-eight hundredths (1 28) per cent of nitrogen, and not more than one and seventy-five hundredths (1.75) per cent of ash.

13. Fruits are the clean, sound, edible, fleshy fructifications of plants, distinguished by their sweet, acid, and ethereal flavors.

Dried fruit is the clean, sound product made by drying mature, properly prepared, fresh fruit in such a way as to take up no harmful substance, and conforms in name to the fruit used in its preparation; sun-dried fruit is dried fruit

Digitized by Google

made by drying without the use of artificial means; evaporated fruit is dried fruit made by drying with the use of artificial means.

Evaporated apples are evaporated fruit made from peeled and cored apples, and contain not more than twenty-seven (27) per cent of moisture determined by the usual commercial method of drying for four (4) hours at the temperature of boiling water.

Canned fruit is the sound product made by sterilizing clean, sound, properly matured and prepared fresh fruit, by heating, with or without sugar (sucrose) and spices, and keeping in suitable, clean, hermetically sealed containers, and conforms in name to the fruit used in its preparation.

Preserve is the sound product made from clean, sound, properly matured and prepared fresh fruit and sugar (sucrose) syrup, with or without spices or vinegar, and conforms in name to that of the fruit used, and in its preparation not less than forty-five (45) pounds of fruit are used to each fifty-five (55) pounds of sugar.

Honey preserve is preserve in which honey is used in place of sugar (sucrose) syrup.

Glucose preserve is preserve in which a glucose product is used in place of sugar (sucrose) sirup.

Jam, marmalade, is the sound product made from clean, sound, properly matured and prepared fresh fruit and sugar (sucrose), with or without spices or vinegar by boiling to a pulpy or semi-solid consistence, and conforms in name to the fruit used, and in its preparation not less than forty-five (45) pounds of fruit are used to each fifty-five (55) pounds of sugar.

Glucose jam, glucose marmalade, is jam in which a glucose product is used in place of sugar (sucrose).

Fruit butter is the sound product made from fruit juice and clean, sound, properly matured and prepared fruit, evaporated to a semi-solid mass of homogeneous consistence, with or without the addition of sugar and spices or vinegar, and conforms in name to the fruit used in its preparation.

Glucose fruit butter is fruit butter in which a glucose product is used in place of sugar (sucrose).

Jelly is the sound, semi-solid, gelatinous product made by boiling clean, sound, properly matured and prepared fresh fruit with water, concentrating the expressed and strained juice, to which sugar (sucrose) is added, and conforms in name to the fruit used in its preparation.

Digitized by Google

Glucose jelly is jelly in which a glucose product is used in place of sugar (sucrose).

14. Vegetables are the succulent, clean, sound, edible parts of herbaceous plants used for culinary purposes.

Dried vegetables are the clean, sound products made by drying properly matured and prepared vegetables in such a way as to take up no harmful substance, and conform in name to the vegetables used in their preparation; sun-dried vegetables are dried vegetables made by drying without the use of artificial means; evaporated vegetables are dried vegetables made by drying with the use of artificial means.

Canned vegetables are sound, properly matured and prepared fresh vegetables, with or without salt, sterilized by heat, with or without previous cooking in vessels from which they take up no metallic substance, kept in suitable, clean, hermetically sealed containers, are sound and conform in name to the vegetables used in their preparation.

Pickles are clean, sound, immature cucumbers, properly prepared, without taking up any metallic compound other than salt, and preserved in any kind of vinegar, with or without spices; pickled onions, pickled beets, pickled beans, and other pickled vegetables are vegetables prepared as described above, and conform in name to the vegetables used.

Salt pickles are clean, sound, immature cucumbers, preserved in a solution of common salt, with or without spices.

Sweet pickles are pickled cucumbers or other vegetables in the preparation of which sugar (sucrose) is used.

Sauerkraut is clean, sound, properly prepared cabbage, mixed with salt, and subjected to fermentation.

Catchup (ketchup, catsup) is the clean, sound product made form the properly prepared pulp of clean, sound, fresh, ripe tomatoes, with spices and with or without sugar and vinegar; mushroom catchup, walnut catchup, et cetera, are catchups made as above described, and conform in name to the substances used in their preparation.

15. Sugar is the product chemically known as sucrose (saccharose) chiefly obtained from sugar cane, sugar beets, sorghum, maple and palm.

Granulated, loaf, cut, milled and powdered sugars are different forms of sugar, and contain at least ninety-nine and five-tenths (99.5) per cent of sucrose.

Maple sugar is the solid product resulting from the evaporation of maple sap, and contains, in the water-free sub-

Digitized by Google

stance, not less than sixty-five hundredths (0.65) per cent of maple sugar ash.

Massecuite, melada, mush sugar, and concrete are products made by evaporating the purified juice of a sugar-producing plant, or a solution of sugar, to a solid or semi-solid consistence, and in which the sugar chiefly exists in a crystalline state.

16. Molasses is the product left after separating the sugar from massecuite, melada, mush sugar, or concrete, and contains not more than twenty-five (25) per cent of water and not more than five (5) per cent of ash.

Refiners' syrup, treacle, is the residual liquid product obtained in the process of refining raw sugars, and contains not more than twenty-five (25) per cent of water and not more than eight (8) per cent of ash.

17. Syrup is the sound product made by purifying and evaporating the juice of a sugar-producing plant without removing any of the sugar.

Sugar-cane syrup is syrup made by the evaporation of the juice of the sugar cane or by the solution of sugar-cane concrete, and contains not more than thirty (30) per cent of water and not more than two and five tenths (2.5) per cent of ash.

Sorghum syrup is syrup made by the evaporation of sorghum juice or by the solution of sorghum concrete, and contains not more than thirty (30) per cent of water and not more than two and five-tenths (2.5) per cent of ash.

Maple syrup is syrup made by the evaporation of maple sap or by the solution of maple concrete, and contains not more than thirty-two (32) per cent of water and not less than forty-five hundredths (0.45) per cent of maple syrup ash.

Sugar syrup is the product made by dissolving sugar to the consistence of a syrup, and contains not more than thirty-five (35) per cent of water.

18. Starch sugar is the solid product made by hydrolizing starch or a starch-containing substance until the greater part of the starch is converted into dextrose. Starch sugar appears in commerce in two forms, anhydrous starch sugar and hydrous starch sugar. The former, crystallized without water of crystallization, contains not less than ninety-five (95) per cent of dextrose and not more than eight tenths (0.8) per cent of ash. The latter, crystallized with water of crystallization, is of two varieties—70 sugar, also known as brewers' sugar, contains not less than seventy (70) per cent of dextrose

Digitized by Google

and not more than eight tenths (0.8) per cent of ash; 80 sugar, climax or acme sugar, contains not less than eighty (80) per cent of dextrose and not more than one and one half (1.5) per cent of ash.

The ash of all these products consists almost entirely of chlorids and sulphates.

Glucose, mixing glucose, confectioner's glucose, is a thick, syrupy, colorless product made by incompletely hydrolizing starch or a starch-containing substance, and decolorizing and evaporating the product. It varies in density from forty-one (41) to forty-five (45) degrees Baume at a temperature of one hundred degrees Fahrenheit, and conforms in density, within these limits, to the degrees Baume it is claimed to show, and for a density of forty-one (41) degrees Baume contains not more than twenty-one (21) per cent and for a density of forty-five (45) degrees not more than fourteen (14) per cent of water. It contains on a basis of forty-one (41) degrees Baume not more than one (1) per cent of ash, consisting chiefly of chlorids and sulphates.

19. Candy is a product made from a saccharine substance or substances with or without the addition of harmless coloring, flavoring, or filling materials, and contains no terra alba, barytes, talc, chrome yellow, or other mineral substances, or poisonous colors or flavors, or other ingredients deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound or narcotic drug.

20. Honey is the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees. *(Apis mellifica* and *A. dorata;)* is lævo-rotatory, contains not more than twenty-five (25) per cent. of water, not more than twenty-five hundredths (0.25) per cent. of ash, and not more than eight (8) per cent. of sucrose.

Comb honey is honey contained in the cells of comb.

Extracted honey is honey which has been separated from the uncrushed comb by centrifugal force or gravity.

Strained honey is honey removed from the crushed comb by straining or other means.

21. Spices are aromatic vegetable substances used for the seasoning of food and from which no portion of any volatile oil or other flavoring principle has been removed, and which are clean, sound and true to name.

Allspice, pimento, is the dried fruit of the *Pimenta pimenta* (L) Karst., and contains not less than eight (8) per cent. of quercitannic acid as calculated from the total oxygen absorbed

Digitized by Google

by the aqueous extract; not more than six (6) per cent. of total ash, not more than five-tenths (0.5) per cent. of ash insoluble in hydrochloric acid, and not more than twenty-five (25) per cent. of crude fibre.

Anise is the fruit of *Pimpinella anisum* L.

Bay leaf is the dried leaf of *Lauris nobilis* L.

Capers are the flower buds of *Capparis spinosa* L.

Caraway is the fruit of *Carum carvi* L.

Red pepper is the red, dried, ripe fruit of any species of *Capsicum.*

Cayenne pepper, cayenne, is the dried ripe fruit of *Capsicum frutescens* L., *Capsicum baccatum* L., or some other small-fruited species of *Capsicum,* and contains not less than fifteen (15 per cent. of non-volatile ether extract; not more than six and five-tenths (6.5) per cent. of total ash; not more than five-tenths (0.5) per cent. of ash insoluble in hydrochloric acid; not more than one and five-tenths (1.5) per cent. of starch, and not more than twenty-eight (28) per cent, of crude fibre.

Paprika is the dried ripe fruit of *Capsicum annuum* L., or some other large-fruited species of *Capsicum,* excluding seeds and stems.

Celery seed is the dried fruit of *Apium graveolens* L.

Cinnamon is the dried bark of any species of the genus *Cinnamomum* from which the outer layers may or may not have been removed.

True cinnamon is the dried inner bark of *Cinnamomum zeylanicum* Breyne.

Cassia is the dried bark of various species of *Cinnamomum* other than *Cinnamomum zeylanicum,* from which the outer layers may or may not have been removed.

Cassia buds are the dried immature fruit of species of *Cinnamomum.*

Ground cinnamon, ground cassia, is a powder consisting of cinnamon, cassia, or cassia buds, or a mixture of these spices, and contains not more than six (6) per cent. of total ash and not more than (2) per cent. of sand.

Cloves are the dried flower buds of *Caryophyllus aromaticus* L., which contains not more than five (5) per cent. of clove stems; not less than ten (10) per cent. of volatile ether extract; not less than twelve (12) per cent. of quercitannic acid as calculated from the total oxygen absorbed by the aqueous extract; not more than eight (8) per cent. of total ash; not more than five-tenths (0.5) per cent. of ash insoluble in hydrochloric acid, and not more than ten (10) per cent. of crude fibre.

Coriander is the dried fruit of *Coriandrum sativum* L.

Digitized by Google

Cumin seed is the fruit of *Cuminum cyminum* L.

Dill seed is the fruit of *Anethum graveolens* L.

Fennel is the fruit of *Foeniculum foeniculum* (L.) Karst.

Ginger is the washed and dried or decorticated and dried rhizome of *Zingiber zingiber* (L.) Karst., and contains not less than forty-two (42) per cent. of starch; not more than eight (8) per cent of crude fibre, not more than (6) per cent. of total ash, not more than one (1) per cent. of lime, and not more than three (3) per cent. of ash insoluble in hydrochloric acid.

Limed ginger, bleached ginger, is whole ginger coated with carbonate of lime, and contains not more than ten (10) per cent of ash, not more than four (4) per cent. or carbonate of lime, and conforms in other respects to the standard for ginger.

Horse-radish is the root of *Roripa armoracia* (L.) Hitchcock, either by itself or ground and mixed with vinegar.

Mace is the dried arillus of *Myristica fragrans* Houttuyn, and contains not less than twenty (20), not more than thirty (30) per cent of non-volatile ether extract, not more than (3) per cent of total ash, and not more than five tenths (0 5) per cent of ash insoluble in hydrochloric acid, and not more than ten (10) per cent of crude fibre.

Macassar mace, Papua mace, is the dried arillus of *Myristica argentea* Warb.

Bombay mace is the dried arillus of *Myristica malabarica* Lamarck.

Marioram is the leaf, flower, and branch of *Majorana majorana* (L.) Karst.

Mustard seed is the seed of *Sinapis alba* L. (white mustard), *Brassica nigra* (L.) Koch (black mustard), or *Brassica juncea* (L.) Cosson (black or brown mustard)

Ground mustard is a powder made from mustard seed, with or without the removal of the hulls and a portion of the fixed oil, and contains not more than two and five tenths (2.5) per cent of starch and not more than eight (8) per cent of total ash.

Prepared mustard, German mustard, French mustard, mustard paste, is a paste composed of a mixture of ground mustard seed or mustard flour with salt, spices, and vinegar, and, calculated free from water, fat, and salt, contains not more than twenty-four (24) per cent of carbohydrates, calculated as starch, determined according to the official methods, not more than twelve (12) per cent of crude fibre nor less than thirty-five (35) per cent of protein, derived solely from the materials named.

Digitized by Google

Nutmeg is the dried seed of the *Myristica fragrans* Houttuyn, deprived of its testa, with or without a thin coating of lime, and contains not less than twenty-five (25) per cent of non-volatile ether extract, not more than five (5) per cent of total ash, not more than five tenths (0.5) per cent of ash insoluble in hydrochloric acid, and not more than ten (10) per cent of crude fibre.

Macassar nutmeg, Papua nutmeg, male nutmeg, long nutmeg, is the dried seed of *Myristica argentea* Warb, deprived of its testa.

Black pepper is the dried immature berry of *Piper nigrum* L. and contains not less than six (6) per cent of non-volatile ether extract, not less than tweny-five (25) per cent of starch, not more than seven (7) per cent of total ash, not more than two (2) per cent of ash insoluble in hydrochloric acid, and not more than fifteen (15) per cent of crude fibre. One hundred (100) parts of the non-volatile ether extract contain not less than three and twenty-five hundredths (3.25) parts of nitrogen. Ground black pepper is the product made by grinding the entire berry, and contains the several parts of the berry in their normal proportions.

Long pepper is the dried fruit of *Piper longum* L.

White pepper is the dried matured berry of *Piper nigrum* L. from which the outer coating or the outer and inner coatings have been removed, and contains not less than six (6) per cent of non-volatile ether extract, not less than fifty (50) per cent of starch, not more than four (4) per cent of total ash, not more than five tenths (0.5) per cent of ash insoluble in hydrochloric acid, and not more than (5) per cent of crude fibre. One hundred (100) parts of the none-volatile ether extract contain not less than four (4) parts of nitrogen.

Saffron is the dried stigma of *Crocus sativus* L.

Sage is the leaf of *Salvia officinalis* L.

Savory, summer savory, is the leaf, blossom, and branch of *Satureja hortensis* L.

Thyme is the leaf and tip of blooming branches of *Thymus vulgaris* L.

22. A flavoring extract is a solution in ethyl alcohol of proper strength of the sapid and odorous principles derived from an aromatic plant, or parts of the plant, with or without its coloring matter, and conforms in name to the plant used in its preparation.

The "flavoring extracts" herein described are intended solely for food purposes and are not to be confounded with

Digitized by Google

similar preparations described in the Pharmacopoeia for medicinal purposes. The term "flavoring extract" includes solutions sold for food purposes as "flavors," "flavorings," "essences," and "tinctures."

Almond extract is the flavoring extract prepared from oil of bitter almonds, free from hydrocyanic acid, and contains not less than one (1) per cent by volume of oil of bitter almonds.

Oil of bitter almonds, commercial, is the volatile oil obtained from the seed of the bitter almond (*Amygdalus communis* L.), the apricot (*Prunus armeniaca* L.), or the peach (*Amygdalus persica* L.).

Anise extract is the flavoring extract prepared from oil of anise, and contains not less than three (3) per cent by volume of oil of anise.

Oil of anise is the volatile oil obtained from the anise seed.

Celery seed extract is the flavoring extract prepared from celery seed or the oil of celery seed, or both, and contains not less than three tenths (0.3) per cent by volume of oil of celery seed.

Oil of celery seed is the volatile oil obtained from celery seed.

Cassia extract is the flavoring extract prepared from oil of cassia and contains not less than two (2) per cent by volume of oil of cassia.

Oil of cassia is the lead-free volatile oil obtained from the leaves or bark of *Cinnamomum cassia* Bl., and contains not less than seventy-five (75) per cent by weight of cinnamic aldehyde.

Cinnamon extract is the flavoring extract prepared from oil of cinnamon, and contains not less than two (2) per cent by volume of oil of cinnamon.

Oil of cinnamon is the lead-free volatile oil obtained from the bark of the Ceylon cinnamon (*Cinnamomum zeylanicum* Breyne), and contains not less than sixty-five (65) per cent by weight of cinnamic aldehyde and not more than ten (10) per cent by weight of eugenol.

Clove extract is the flavoring extract prepared from oil of cloves, and contains not less than two (2) per cent by volume of oil of cloves.

Oil of cloves is the lead-free volatile oil obtained from cloves.

Ginger extract is the flavoring extract prepared from ginger and contains in each one hundred (100) cubic centimetres the

Digitized by Google

alcohol-soluble matters from not less than twenty (20) grams of ginger.

Lemon extract is the flavoring extract prepared from oil of lemon, or from lemon peel, or both, and contains not less than five (5) per cent by volume of oil of lemon.

Oil of lemon is the volatile oil obtained by expression or alcoholic solution, from the fresh peel of the lemon *(Citrus limonum* L.), has an optical rotation at twenty-five (25) degrees Centigrade of not less than sixty (+60) degrees in a one-hundred-millimetre tube, and contains not less than four (4) per cent by weight of citral.

Terpeneless extract of lemon is the flavoring extract prepared by shaking oil of lemon with dilute alcohol, or by dissolving terpeneless oil of lemon in dilute alcohol, and contains not less than two tenths (0.2) per cent by weight of citral derived from oil of lemon.

Terpeneless oil of lemon is oil of lemon from which all or nearly all of the terpenes have been removed.

Nutmeg extract is the flavoring extract prepared from oil of nutmeg, and contains not less than two (2) per cent by volume of oil of nutmeg.

Oil of nutmeg is the volatile oil obtained from nutmegs.

Orange extract is the flavoring extract prepared from oil of orange, or from orange peel, or both, and contains not less than five (5) per cent by volume of oil of orange.

Oil of orange is the volatile oil obtained, by expression or alcoholic solution, from the fresh peel of the orange, *(Citrus ourantium* L.) and has an optical rotation at twenty-five (25) degrees Centrigrade of not less than ninety-five (+95) degrees in a one-hundred-millimetre tube.

Terpeneless extract of orange is the flavoring extract prepared by shaking oil of orange with dilute alcohol, or by dissolving terpeneless oil of orange in dilute alcohol, and corresponds in flavoring strength to orange extract.

Terpeneles oil of orange is oil of orange from which all or nearly all of the terpenes have been removed.

Peppermint extract is the flavoring extract prepared from oil of peppermint, or from peppermint, or both, and contains not less than three (3) per cent by volume of oil of peppermint.

Peppermint is the leaves and flowering tops of *Mentha piperita* L.

Oil of peppermint is the volatile oil obtained from pepper-

Digitized by Google

mint, and contains not less than fifty (50) per cent by weight of menthol.

Rose extract is the flavoring extract prepared from otto of roses, with or without red rose petals, and contains not less than four tenths (0.4) per cent by volume of otto of roses.

Otto of roses is the volatile oil obtained from the petals of *Rosa damascena* Mill., R. *centifolia* L., or R. *moschata* Herrm.

Savory extract is the flavoring extract prepared from oil of savory, or from savory, or both, and contains not less than thirty-five hundredths (0.35) per cent by volume of oil of savory.

Oil of savory is the volatile oil obtained from savory.

Spearmint extract is the flavoring extract prepared from oil of spearmint, or from spearmint, or both, and contains not less than three (3) per cent by volume of oil of spearmint.

Spearmint is the leaves and flowering tops of *Mentha spicata* L.

Oil of spearmint is the volatile oil obtained from spearmint.

Star anise extract is the flavoring extract prepared from oil of star anise, and contains not less than three (3) per cent by volume of oil of star anise.

Oil of star anise is the volatile oil distilled from the fruit of the star anise (*Illicium verum* Hook.)

Sweet basil extract is the flavoring extract prepared from oil of sweet basil, or from sweet basil, or both, and contains not less than one-tenth (0.1) per cent by volume of oil of sweet basil.

Sweet basil, basil, is the leaves and tops of *Ocymum basilicum* L.

Oil of sweet basil is the volatile oil obtained from basil.

Sweet marjoram extract, marjoram extract, is the flavoring extract prepared from the oil of marjoram, or from marjoram, or both, and contains not less than one (1) per cent by volume of oil of marjoram.

Oil of marjoram is the volatile oil obtained from marjoram.

Thyme extract is the flavoring extract prepared from oil of thyme, or from thyme, or both, and contains not less than two-tenths (0.2) per cent by volume of oil of thyme.

Oil of thyme is the volatile oil obtained from thyme.

Tonka extract is the flavoring extract prepared from tonka bean, with or without sugar or glycerin, and contains not less than one tenth (0.1) per cent by weight of coumarin extracted from the tonka bean, together with a corresponding proportion of the other soluble matters thereof.

Digitized by Google

Tonka bean is the seed of *Coumarouna odorata* Aublet [*Dipteryx odorata* (Aubl.) Willd.].

Vanilla extract is the flavoring extract prepared from vanilla bean, with or without sugar or glycerin, and contains in one hundred (100) cubic centimetres the soluble matters from not less than ten (10) grams of the vanilla bean.

Vanilla bean is the dried, cured fruit of *Vanilla planifolia* Andrews.

Wintergreen extract is the flavoring extract prepared from oil of wintergreen, and contains not less than three (3) per cent by volume of oil of wintergreen.

Oil of wintergreen is the volatile oil distilled from the leaves of the *Gaultheria procumbens* L.

23. Olive oil is the oil obtained from the sound, mature fruit of the cultivated olive tree, (*Olea europoea* L.) and subjected to the usual refining processes; is free from rancidity; has a refractive index at twenty-five (25) degrees Centigrade not less than one and forty-six hundred sixty ten-thousandths (1.4660) and not exceeding one and forty-six hundred eighty ten-thousandths (1.4680); and an iodin number not less than seventy-nine (79) and not exceeding ninety (90).

Virgin olive oil is olive oil obtained from the first pressing of carefully selected hand-picked olives.

Cotton-seed oil is the oil obtained from the seeds of cotton plants (*Gossypium hirsutum* L., *G. barbadense* L., *G. herbaceum* L.) and subjected to the usual refining processes; is free from rancidity; has a refractive index at twenty-five (25) degrees Centigrade not less than one and forty-seven hundred ten-thousandths (1.4700) and not exceeding one and forty-seven hundred twenty-five ten-thousandths (1.4725); and an iodin number not less than one hundred four (104) and not exceeding one hundred ten (110).

"Winter-yellow" cotton-seed oil is expressed cotton-seed oil from which a portion of the stearin has been separated by chill-at twenty-five (25) degrees Centigrade not less than one and hundred ten (110) and not exceeding one hundred sixteen (116).

Peanut oil, arachis oil, earthnut oil, is the oil obtained from the peanut (*Arachis hypogaea* L.) and subjected to the usual refining processes; is free from rancidity; has a refractive index at twenty-five (25) degrees Centigrade not less than one and forty-six hundred ninety ten-thousandths (1.4690) and not exceeding one and forty-seven hundred seven ten-thousandths (1.4707); and an iodin number not less than eighty-seven (87) and not exceeding one hundred (100).

Digitized by Google

"Cold drawn" peanut oil is peanut oil obtained by pressure without heating.

Sesame oil, gingili oil, teel oil, is the oil obtained from the seed of the sesame plants (*Sesamum orientale* L. and *S. radiatum* Schum. and Thonn.) and subjected to the usual refining processes; is free from rancidity; has a refractive index at twenty-five (25) degrees Centigrade not less than one and forty-seven hundred four ten-thousandths (1.4704) and not exceeding one and forty-seven hundred seventeen ten-thousandths (1.4717); and an iodin number not less than one hundred three (103) and not exceeding one hundred twelve (112).

"Cold drawn" sesame oil is sesame oil obtained by pressure without heating.

Poppy-seed oil is the oil from the seed of the poppy (*Papaver somniferum* L.) subjected to the usual refining processes and free from rancidity.

White poppy-seed oil, "cold drawn" poppy-seed oil, is poppy-seed oil of the first pressing without heating.

Coconut oil is the oil obtained from kernels of the coconut (*Cocos nucifera* L.) and subjected to the usual refining processes and free from rancidity.

Cochin oil is coconut oil prepared in Cochin (Malabar).

Ceylon oil is coconut oil prepared in Ceylon.

Copra oil is coconut oil prepared from copra, the dried kernels of the coconut.

Rape-seed oil, colza oil, is the oil obtained from the seeds of the rape plant (*Brassica napus* L.) and subjected to the usual refining processes and free from rancidity.

"Cold-drawn" rape-seed oil is rape-seed oil obtained by the first pressing without heating.

Sunflower oil is the oil obtained from the seeds of the sunflower (*Helianthus annus* L.) and subjected to the usual refining processes and free from rancidity.

"Cold-drawn" sunflower oil is sunflower oil obtained by the first pressing without heating.

Maize oil, corn oil, is the oil obtained from the germ of the maize (*Zea mays* L.) and subjected to the usual refining processes and free from rancidity.

Cocoa butter, cacao butter, is the fat obtained from roasted, sound cocoa beans, and subjected to the usual refining processes; is free from rancidity; has a refractive index at forty (40) degrees Centigrade not less than one and forty-five hundred sixty-six ten-thousandths (1.4566) and not exceeding one and forty-five hundred ninety-eight ten-thousandths (1.4598); an iodin

Digitized by Google

number not less than thirty-three (33) and not exceeding thirty-eight (38); and a melting point not lower than thirty (30) degrees Centigrade nor higher than thirty-five (35) degrees Centigrade.

Cotton-seed oil stearin is the solid product made by chilling cotton-seed oil and separating the solid portion by filtration, with or without pressure, and having an iodin number not less than eighty-five (85) and not more than one hundred (100).

24. Tea is the leaves and leaf buds of different species of *Thea,* prepared by the usual trade processes of fermenting, drying, and firing; conforms in variety and place of production to the name it bears; and contains not less than four (4) nor more than seven (7) per cent of ash.

25. Coffee is the seed of *Coffea arabica* L. or *Coffea liberica* Bull., freed from all but a small portion of its spermoderm, and conforms in variety and place of production to the name it bears.

Roasted coffee is coffee which by the action of heat has become brown and developed its characteristic aroma, and contains not less than ten (10) per cent of fat and not less than three (3) per cent of ash.

26. Cocoa beans are the seeds of the cacao tree, *Theobroma cacao* L.

Cocoa nibs, cracked cocoa, is the roasted, broken cocoa bean freed from its shell or husk.

Chocolate, plain chocolate, bitter chocolate, chocolate liquor, bitter chocolate coatings, is the solid or plastic mass obtained by grinding cocoa nibs without the removal of fat or other constituents except the germ, and contains not more than three (3) per cent of ash insoluble in water, three and fifty-hundredths (3.50) per cent of crude fibre, and nine (9) per cent of starch, and not less than forty-five (45) per cent of cocoa fat.

Sweet chocolate, sweet chocolate coatings, is chocolate mixed with sugar (sucrose), with or without the addition of cocoa butter, spices, or other flavoring materials, and contains in the sugar and fat-free residue no higher percentage of either ash, fibre, or starch than is found in the sugar- and fat-free residue of chocolate.

Cocoa, powdered cocoa, is cocoa nibs, with or without the germ, deprived of a portion of its fat and finely pulverized, and contains percentages of ash, crude fibre, and starch corresponding to those in chocolate after correction for fat removed.

Digitized by Google

Sweet cocoa, sweetened cocoa, is cocoa mixed with sugar (sucrose), and contains not more than sixty (60) per cent of sugar (sucrose), and in the sugar- and fat-free residue no higher percentage of either ash, crude fibre, or starch than is found in the sugar- and fat-free residue of chocolate.

27. Fresh fruit juices are the clean, unfermented liquid products obtained by the first pressing of fresh, ripe fruits, and correspond in name to the fruits from which they are obtained.

Apple juice, apple must, sweet cider, is the fresh fruit juice obtained from apples, the fruit of *Pyrus malus,* has a specific gravity at twenty (20) degrees Centigrade not less than one and four hundred fifteen ten-thousandths (1.0415) nor greater than one and six hundred ninety ten-thousandths (1.0690); and contains in one hundred (100) cubic centimetres at twenty (20) degrees Centigrade not less than six (6) grams, and not more than twenty (20) grams of total sugars, in terms of reducing sugars, not less than twenty-four (24) centigrams nor more than sixty (60) centigrams of apple ash, which contains not less than fifty (50) per cent of potassium carbonate.

Grape juice, grape must, is the fresh fruit juice obtained from grapes (*Vitis* species), has a specific gravity at twenty (20) degrees Centigrade not less than one and four hundred ten-thousandths (1.0400) and not exceeding one and one thousand two hundred forty ten-thousandths (1.1240); and contains, in one hundred (100) cubic centimetres at twenty (20) Centigrade, not less than seven (7) grams nor more than twenty-eight (28) grams of total sugars, in terms of reducing sugars, not less than twenty (20) centigrams and not more than fifty-five (55) centigrams of grape ash, and not less than fifteen (15) milligrams nor more than seventy (70) milligrams of phosphoric acid ($P_2 O_5$).

Lemon juice is the fresh fruit juice obtained from lemon, the fruit of *Citrus Limonum* Risso, has a specific gravity at twenty (20) degrees Centigrade not less than one and thirty thousandths (1.030) and not greater than one and forty thousandths (1.040); and contains not less than ten (10) per cent of solids, and not less than seven (7) per cent of citric acid.

Pear juice, pear must, sweet perry, is the fresh fruit juice obtained from pears, the fruit of *Pyrus communis* or *P. sinensis.*

28. Sterilized fruit juices are the products obtained by heating fresh fruit juices sufficiently to kill all the organisms present and correspond in name to the fruits from which they are obtained.

Digitized by Google

29. Concentrated fruit juices are clean, sound fruit juices from which a considerable portion of the water has been evaporated, and correspond in name to the fruits from which they are obtained.

30. Sweet fruit juices, sweetened fruit juices, fruit syrups, are the products obtained by adding sugar (sucrose) to fresh juices, and correspond in name to the fruits from which they are obtained.

Sterilized fruit syrups are the products obtained by the addition of sugar (sucrose) to fresh fruit juices and heating them sufficiently to kill all the organisms present, and correspond in name to the fruits from which they are obtained.

31. Wine is the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, and the usual cellar treatment, and contains not less than seven (7) nor more than sixteen (16) per cent of alcohol, by volume, and, in one hundred (100) cubic centimetres at twenty (20) degrees Centigrade, not more than one tenth (0.1) gram of sodium chlorid nor more than two tenths (0.2) gram of potassium sulphate; and for red wine not more than fourteen hundredths (0.14) gram, and for white wine not more than twelve hundredths (0.12) gram of volatile acids produced by fermentation and calculated as acetic acid. Red wine is wine containing the red coloring matteer of the skins of grapes. White wine is wine made from white grapes or the expressed fresh juice of other grapes.

Dry wine is wine in which the fermentation of the sugars is practically complete and which contains, in one hundred (100) cubic centimetres at twenty (20) degrees Centigrade, less than one (1) gram of sugars and for dry red wine not less than sixteen hundredths (0.16) gram of grape ash and not less than one and six tenths (1.6) grams of sugar-free grape solids, and for dry white wine not less than thirteen hundredths (0.13) gram of grape ash and not less than one and four tenths (1.4) grams of sugar-free grape solids.

Fortified dry wine is dry wine to which brandy has been added, but which conforms in all other particulars to the standard of dry wine.

Sweet wine is wine in which the alcoholic fermentation has been arrested, and which contains, in one hundred (100) cubic centimetres at twenty (20) degrees Centigrade, not less than one (1) gram of sugars, and for sweet red wine not less than sixteen hundredths (0.16) gram of grape ash, and for sweet

Digitized by Google

white wine not less than thirteen hundredths (0.13) gram of grape ash.

Fortified sweet wine is sweet wine to which wine spirits have been added.

Sparkling wine is wine in which the after-part of the fermentation is completed in the bottle, the sediment being disgorged and its place supplied by wine or sugar liquor, and which contains, in one hundred (100) cubic centimetres at twenty (20) degrees Centigrade, not less than twelve hundredths (0.12) gram of grape ash.

Modified wine, ameliorated wine, corrected wine, is the product made by the alcoholic fermentation, with the usual cellar treatment, of a mixture of the juice of sound, ripe grapes with sugar (sucrose), or a syrup containing not less than sixty-five (65) per cent of sugar (sucrose), and in quantity not more than enough to raise the alcoholic strength after fermentation to eleven (11) per cent by volume.

Raisin wine is the product made by the alcoholic fermentation of an infusion of dried or evaporated grapes, or a mixture of such infusion or of raisins with grape juice.

Cider, hard cider, is the product made by the normal alcoholic fermentation of apple juice, and the usual cellar treatment, and contains not more than seven (7) per cent by volume of alcohol, and, in one hundred (100) cubic centimetres of the cider, not less than two (2) grams nor more than twelve (12) grams of solids, not more than eight (8) grams of sugars, in terms of reducing sugars, and not less than twenty (20) centigrams nor more than forty (40) centigrams of cider ash.

Sparkling cider, champaigne cider, is cider in which the afterpart of the fermentation is completed in closed containers, with or without the addition of cider or sugar liquor, and contains, in one hundred (100) cubic centimeters, not less than twenty (20) centigrams of cider ash.

32. Vinegar, cider vinegar, apple vinegar, is the product made by the alcoholic and subsequent acetous fermentations of the juice of apples, is laevo-rotatory, and contains not less than four (4) grams of acetic acid, not less than one and six-tenths (1.6) grams of apple solids, of which not more than fifty (50) per cent are reducing sugars, and not less than twenty-five hundredths (.0.25) gram of apple ash in one hundred (100) cubic centimetres at twenty (20) degrees Centigrade; and the water-soluble ash from one hundred (100)

Digitized by Google

cubic centimetres at twenty (20) degrees Centigrade of the vinegar contains not less than ten (10) milligrams of phosphoric acid (P_2O_5), and requires not less than thirty (30) cubic centimetres of decinormal acid to neutralize its alkilinity.

Wine vinegar, grape vinegar, is the product made by the alcoholic and subsequent acetous fermentations of the juice of grapes and contains, in one hundred (100) cubic centimetres at twenty (20) degrees Centigrade, not less than four (4) grams of acetic acid, not less than one (1.0) gram of grape solids, and not less than thirteen hundredths (0.13) gram of grape ash.

Malt vinegar is the product made by the alcoholic and subsequent acetous fermentations, without distillation, and of an infusion of barley malt or cereals whose starch has been converted by malt, is dextro-rotary, and contains, in one hundred (100) cubic centimetres at twenty (20) degrees Centigrade, not less than four (4) grams of acetic acid, and not less than two (2) grams of solids, and not less than two-tenths (0.2) gram of ash; and the water-soluble ash from one hundred (100) cubic centimetres at twenty (20) degrees Centigrade of the vinegar contains not less than nine (9) milligrams of phosphoric acid (P_2O_5), and requires not less than four (4) cubic centimetres of decinormal acid to neutralize its alkalinity.

Sugar vinegar is the product made by the alcoholic and subsequent acetous fermentations of solutions of sugar, sirup, molasses, or refiners' sirup, and contains in one hundred (100) cubic centimetres at twenty (20) degrees Centigrade, not less than four (4) grams of acetic acid.

Glucose vinegar is the product made by the alcoholic and subsequent acetous fermentations of solutions of starch sugar or glucose, is dextro-rotatory, and contains, in one hundred (100) cubic centimetres at twenty (20) degrees Centigrade, not less than four (4) grams of acetic acid.

Spirit vinegar, distilled vinegar, grain vinegar, is the product made by the acetous fermentation of dilute distilled alcohol, and contains, in one hundred (100) cubic centimetres at twenty (20) degrees Centigrade, not less than four (4) grams of acetic acid.

33. Table salt, dairy salt, is fine-grained crystalline salt containing, on a water-free basis, not more than one and four-tenths (1.4) per cent of calcium sulphate ($CaSO_4$), nor more than five-tenths (0.5) per cent of calcium and magnesium

Digitized by Google

chlorids ($CaCl_2$ and $MgCl_2$), nor more than one-tenth (0.1) per cent of matters insoluble in water.

Section 3. This act shall take effect and be in force from and after January 1, 1910.

Sale of mixed jellies, jams, preserves and fruit butters.

CHAPTER 344, 1909.

SECTION 1. There is added to the statutes a new section to read: Section 4601—5. 1. For the purposes of this act the following definitions and standards are hereby classified:

(1). Fruits are the clean, sound, edible, fleshy fructifications of plants, distinguished by their sweet, acid, and ethereal flavors.

(2). Preserve is the sound product made from clean, sound, properly matured and prepared fresh fruit and sugar (sucrose) syrup, with or without spices or vinegar, and conforms in name to that of the fruit used, and in its preparation not less than forty-five (45) pounds of fruit are used to each fifty-five (55) pounds of sugar.

(3). Honey preserve is preserve in which honey is used in place of sugar (sucrose) syrup.

(4). Glucose preserve is preserve in which glucose product is used in place of sugar (sucrose) syrup.

(5). Jam, marmalade, is the sound product made from clean, sound, properly matured and prepared fresh fruit and sugar (sucrose), with or without spices or vinegar by boiling to a pulpy or semisolid consistence, and conforms in name to the fruit used and in its preparation not less than forty-five (45) pounds of fruit are used to each fifty-five (55) pounds of sugar.

(6). Glucose jam, glucose marmalade, is jam in which a glucose product is used in place of sugar (sucrose).

(7). Fruit butter is the sound product made from fruit juice and clean, sound, properly matured and prepared fruit, evaporated to a semisolid mass of homogeneous consistence, with or without the addition of sugar and spices or vinegar, and conforms in name to the fruit used in its preparaton.

(8). Glucose fruit butter is fruit butter in which a glucose product is used in place of sugar (sucrose).

(9). Jelly is the sound, semisolid, gelatinous product made by boiling clean, sound, properly matured and prepared fresh fruit with water, concentrating the expressed and strained juice, to which sugar (sucrose) is added, and conforms in name to the fruit used in its preparation.

Digitized by Google

(10). Glucose jelly is jelly in which a glucose product is used in place of sugar (sucrose).

2. It shall be unlawful to sell, offer or expose for sale, or have in possession with intent to sell any mixed preserves, jams, fruit butters or jellies which contain more than one fruit, or the juices of more than one fruit prepared with sugar, glucose or honey or any two of them or all of them, unless each receptacle containing the same is labeled as follows:

First. The names of all fruits and fruit juices contained in the product shall be stated on the label in continuous list in the order of their preponderance in type of the same size and style; provided, that if any fruit or fruits or the juices of any fruit or fruits shall be used in the preparation of any of the said products in the proportion of less than twenty-five (25) per cent by weight of the total amount of fruit or fruit juices contained therein, such fruit or fruits or fruit juices shall be designated on the label as a flavor and the word "flavor" shall be printed in type of the same size, color and style as may be employed in the printing of the name of the fruit or fruits.

Second. There shall be printed on the principal label, in continuous list in the order of their preponderance, the names sugar, glucose and honey or any two thereof which are used in the product as sweetening agents; provided, however, that in all such products in which glucose shall be used in excess of seventy-five (75) per cent of the total amount by weight of such sweetening agents, there shall also be conspicuously printed on the principal label the percentage by weight of glucose contained in the mixed product.

3. Any person who by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, shall violate any of the provisions of this act shall upon conviction thereof be punished by a fine of not less than twenty-five (25) dollars nor more than one hundred (100) dollars, or by imprisonment in the county jail not less than thirty (30) days nor more than sixty (60) days.

SECTION 2. This act shall take effect and be in force from and after October 1, 1909.

Digitized by Google

Sale of sausage and sausage mixtures.

CHAPTER 381, 1909.

SECTION 1. There is added to the statutes a new section to read: Section 4601—6. 1. No person by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, shall sell, offer or expose for sale or have in possession with intent to sell any product as and for sausage, unless the same complies with the following definition and standard, to wit:

Sausage, sausage meat, is a comminuted meat from neat cattle or swine, or a mixture of such meats, either fresh, salted, pickled or smoked, with added salt and spices and with or without the addition of edible animal fats, blood and sugar, or subsequent smoking. It contains no larger amount of water than the meats from which it is prepared contain when in their fresh condition, and if it bears a name descriptive of kind, composition or origin, it corresponds to such descriptive name. All animal tissues used as containers, such as casings, stomachs, etc., are clean and sound and impart to the contents no other substance than salt. Nothing in this act shall be construed as prohibiting the sale of sausage mixed with not to exceed four (4) per cent of cereals or potato flour and not to exceed ten (10) per cent of added water as and for "sausage with cereals" or "sausage with potato flour" as the case may be.

2. Any person who by himself or his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, shall violate any of the provisions of this act shall upon conviction thereof be punished by a fine of not less than twenty-five dollars, nor more than one hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than sixty days.

SECTION 2. This act shall take effect and be in force from and after October 1, 1909.

Label on poisonous medicine. Section 4601*c*. Any person who shall, by himself, his servant or agent or as the servant or agent of any other person, sell, exchange, deliver, or have in his possession with intent to sell or exchange, or expose or offer for sale or exchange any medicine known as patent or proprietary, or of which the formula is kept secret by the manufacturer, which contains morphine, strychnine, cocaine or poisonous or narcotic alkaloid or drug, in any quantities which the state

Digitized by Google

board of health shall deem harmful to the life or health of the public, unless the presence of the same be distinctly shown by a label upon the bottle or package and upon the outer wrapper thereof, shall be punished as provided in section 4601a.

Foods containing chemical preservatives. Section 4601e. (Sec. 1, ch. 33, 1905.) No person, firm or corporation shall, by himself, or by his agents or servants, manufacture, sell, ship, consign, offer for sale, expose for sale or have in his possession with intent to sell for use or consumption within the state, any article of food within the meaning of section 4600 of the statutes of 1898 and laws amendatory thereof, which contains formaldehyde, sulphurous acid or sulphites, boric acid or borates, salicylic acid or salicylates, saccharin, dulcin, glucin, beta naphthol, abrastol, asaprol, fluorides, fluoborates, fluosilicates or other fluorine compounds or any other preservatives injurious to health; provided, however, that nothing contained in this section shall prohibit the use of common salt, saltpetre, wood smoke, sugar, vinegar and condimental preservatives, such as turmeric, mustard, pepper and other spices. Nor shall any person, firm or corporation, by himself, or by his agents or servants, manufacture, sell, ship, consign, offer for sale, expose for sale or have in his possession with intent to sell for use or consumption within the state, any article of food within the meaning of section 4600 of the statutes of 1898 and laws amendatory thereof, containing any added substance, article or ingredient possessing a preservative character or action other than the articles named in the proviso of this act, unless the presence, name and proportionate amount of said added substance, article or ingredient shall be plainly disclosed to the purchaser.

Penalty. Section 4601f. (Sec. 2, ch. 33, 1905.) Every person, firm, or corporation and every officer, agent, servant or employee of such person, firm or corporation who violates any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars or be imprisoned in the county jail not less than thirty days nor more than sixty days.

Digitized by Google

Artificially bleached flour; articles of food containing benzoic acid or benzoates.

CHAPTER 399, 1909.

An act to create section 4601g of the statutes, to protect and promote the public health, to prevent fraud and deception in the sale of articles of food, and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. There is added to the statutes a new section to read: Section 4601g. It shall be unlawful to sell, offer or expose for sale or have in possession with intent to sell for use or consumption in this state, any flour that has been artificially bleached.

It shall be unlawful to sell, offer or expose for sale or have in possession with intent to sell for use or consumption in this state, any article of food as defined in section 4600 of the statutes, which contains added benzoic acid or benzoates; provided that when in the preparation of food products for shipment they are preserved by any external application of benzoic acid or benzoates in such a manner that the preservative is necessarily removed mechanically, or by maceration in water, or otherwise, and directions for the removal of said preservative shall be printed on the covering or the package, the provisions of this act shall be construed as applying only when said products are ready for consumption.

Any person who, by himself, his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, shall violate any of the provisions of this act shall upon conviction thereof be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not less than thirty days nor more than sixty days.

SECTION 2. This act shall take effect and be in force from and after January first, one thousand nine hundred and ten.

Digitized by Google

Sanitary production and distribution of food.

CHAPTER 334, LAWS OF 1909.

An act to create section 4601h of the statutes, relating to the sanitary production and distribution of food, defining the duties of the dairy and food commissioner in relation thereto and providing a penalty.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. There is added to the statutes a new section to read: Section 4601h. 1. It shall be unlawful to manufacture or prepare for sale food as defined in section 4600 of the statutes, unless in the process of its manufacture for sale or its preparation for sale it is securely protected from filth, flies, dust or other contamination, or other unclean, unhealthful or unsanitary conditions. It shall be unlawful to store or offer or expose for sale or sell food as defined in section 4600 of the statutes, unless it is securely protected from filth, flies, dust or other contamination, or other unclean, unhealthful or unsanitary conditions.

2. The dairy and food commissioner is hereby authorized and empowered, by himself, or by his assistants, chemists, inspectors or agents, to enforce the provisions of this act, and for this purpose, he or any of his assistants, chemists, inspectors or agents shall have power to enter and inspect every building, room, basement or cellar, which may be occupied or used for the manufacture or preparation for sale, storage, exposing or offering for sale or selling food as herein defined; and the dairy and food commissioner and his assistants, chemists, inspectors and agents shall have all the power conferred by the statutes upon him or them or any of them for the enforcement of the dairy and food and drug laws of this state in so far as the same may be applicable in the enforcement of the provisions of this act.

3. The district attorney of the county in which a violation of any such law has occurred shall, when called upon by the dairy and food commissioner or any of his assistants, chemists, inspectors or agents to do so, give all the aid he can to secure the execution of the law and shall prosecute cases arising under the provisions of this chapter. All fines collected in prosecutions begun or caused to be begun by the

Digitized by Google

dairy and food commissioner or any of his assistants, chemists, inspectors or agents shall be paid into the state treasury.

4. Any person, who by himself, or his servant or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, shall violate any of the provisions of this statute or who shall obstruct the dairy and food commissioner of this state or any of his assistants, chemists, inspectors or agents in the performance of his duty by refusing entrance to any place he is authorized to enter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not less than thirty days nor more than ninety days.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Coloring grain. Section 4606. Any person who shall fumigate any barley, wheat or other grain by the use of surphur or other substance, or shall in any way or by the use of any chemical, material or process affect the color or healthfulness of such grain, or who shall sell or offer for sale any such grain knowing that the same has been so fumigated or the color or the healthfulness thereof so affected shall be punished by imprisonment in the county jail not more than one month or by fine not exceeding fifty dollars.

Penalty for sale of adulterated milk and cream. Section 4607. (As amended by ch. 138, 1905 and ch. 14, 1909. Any person who shall by himself, his servant or agent or as the servant or agent of any other person, or as the servant or agent of any corporation, sell or offer for sale, furnish or deliver, or have in his possession with intent to sell or offer for sale or furnish or deliver to any creamery, cheese factory, corporation or person, any adulterated milk or any adulterated cream shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or be imprisoned in the county jail not less than thirty days nor more than sixty days.

Validity. A New York law (ch. 183, 1885, ch. 202, 1884), providing that "no person or persons shall sell, supply or bring to be manufactured to any butter or cheese factory any milk diluted with water or any unclean, impure, unhealthy, adulterated or unwholesome milk," has been sustained as a valid exercise of legislative power: People v. West, 106 N. Y., 293.

Construction. The New York law does not make fraudulent intent a necessary ingredient of the offense and it would not be a reasonable construction of

Digitized by Google

it to apply it to a dairyman who owns and conducts a butter or cheese factory for the manufacture of those articles from milk furnished exclusively by himself from his own cows. If the defendant is such a person, these facts are matter of defense, and their existence need not be negatived on the face of the indictment: People v. West, 106 N. Y., 293.

Under a Massachusetts law imposing a penalty for selling or offering to sell "adulterated milk, or milk to which any foreign substance has been added," it is immaterial whether the substance added is injurious or not. The indictment need not allege the quantity of such substance: Commonwealth v. Schaffner, 146 Mass., 512.

Under an act which prohibits the sale of milk which is not of a good, standard quality, the fact that the milk was delivered under a contract to furnish the person who bought it with the milk of one dairy is not a defense if that furnished was not of such quality. The contract would be held to contemplate milk which should be bought and sold: Commonwealth v. Holt, 146 Mass., 38.

Sale, what is. A hotel-keeper who sells milk to be drunk by his guests on his premises is liable if the milk so sold is not of the quality prescribed by the next section: Commonwealth v. Vieth, 155 Mass., 442.

The Massachusetts statute uses the language "whoever by himself, or by his servant or agent," etc. Held to include a hotel-keeper's servant who made a sale to a guest, though the master was not present and did not consent to or know of the particular sale: Commonwealth v. Vieth, 155 Mass., 442.

Milk bought by a guest and delivered to him as part of his meal is just as much a sale as if a specific price had been put upon it or it had been bought or paid for by itself: Commonwealth v. Warren, 160 Mass., 533.

Intent to sell, evidence of. Where one is charged with having in his possession, with intent to sell, milk which is not of a good, standard quality, the fact that he was upon a wagon which had his name painted on it, and that therein were cans of milk, and that a sample was given from one of them to one employed by the milk inspector for analysis, is competent evidence to go to the jury upon the question of his intent: Commonwealth v. Rowell, 146 Mass., 128.

Standard for milk; evidence. Section 4607*a*. (As amended by ch. 138, laws of 1905.) In all prosecutions under the preceding section, or any other section of these statutes, or laws amendatory thereof or supplementary thereto, relating to the sale of adulterated milk or adulterated cream, the term adulterated milk shall mean: Milk containing less than three percentum of milk fat, or milk containing less than eight and one-half percentum of milk solids not fat. or milk drawn from cows within eight days before or four days after parturition, or milk from which any part of the cream has been removed, or milk which has been diluted with water or any other fluid, or milk to which has been added or into which has been introduced any coloring matter or chemical or preservative or deleterious or filthy substance or any foreign substance whatsoever, or milk drawn from cows kept in a filthy or unhealthy condition, or milk drawn from any sick or diseased cow or cow having ulcers or other running sores, or milk drawn from cows fed unwholesome food, or milk in any stage of putre-

Digitized by Google

faction, or milk contaminated by being kept in stables containing cattle or other animals. The term adulterated cream shall mean cream containing less than eighteen percentum of milk fat, or cream taken from milk drawn from cows within eight days before or four days after parturition, or cream from milk to which has been added or introduced any coloring matter or chemical or preservative or deleterious or filthy substance or any foreign substance whatsoever, or cream from milk drawn from cows kept in a filthy or unhealthy condition, or cream from milk drawn from any sick or diseased cow or cow having ulcers or other running sores, or cream from milk drawn from cows fed unwholesome food, or cream contaminated by being kept in stables containing cattle or other animals, or cream to which has been added or into which has been introduced any coloring matter or chemical or preservative or deleterious or filthy substance or any foreign substance whatsoever, or cream in any stage of putrefaction; provided, that nothing in this act shall be construed to prohibit the sale of pasteurized milk or cream to which viscogen or sucrate of lime has been added solely for the purpose of restoring the viscosity, if the same be distinctly labeled in such manner as to advise the purchaser of its true character; and providing that nothing in this act shall be construed as prohibiting the sale of milk commonly known as "skimmed milk," when the same is sold as and for "skimmed milk." Milk drawn from cows within eight days before or four days after parturition, or milk to which has been added or into which has been introduced any coloring matter or chemical or preservative or deleterious or filthy substance or milk drawn from cows kept in a filthy or unclean condition, or milk drawn from any sick or diseased cow or cow having ulcers or other running sores, or milk drawn from cows fed unwholesome food, or milk contaminated by being kept in stables containing cattle or other animals and cream from any such milk, or cream in any stage of putrefaction are hereby declared to be unclean and unsanitary milk or unclean and unsanitary cream, as the case may be.

Validity. The supreme court of New York has ruled that a statute which provides that milk which contains less than three percentum of fat shall be declared adulterated is unconstitutional. The ground upon which this was held was that the statute deprived the defendant of his liberty and property without due process of law, in that it barred him of the right upon the trial of the accusation against him to have the issue determined according to what might be the proof, and compelled him to submit to the statutory declaration thereof, without regard to the truth: People v. Cipperly, 37 Hun, 317. This decision was not unanimous, and on appeal was reversed by the court of ap-

Digitized by Google

peals, without opinion, and on the grounds given by the dissenting judge of the supreme court: People v. Cipperly, 101 N. Y., 634.

A law of New Hampshire (ch. 42, laws of 1883) prohibited the sale of adulterated milk, or milk to which water or any foreign substance has been added, or, as pure, milk from which the cream or a part thereof has been removed. It authorized inspectors of milk to take samples and cause the same to be analyzed, and expressed that in all prosecutions under it if the milk is shown by analysis to contain more than eighty-seven per cent. of watery fluid, or less than thirteen per cent. of milk solids, it shall be deemed for the purposes of the statute to be adulterated. It was contended that the clause fixing the standard was unconstitutional. In answer the court said: "The statute tends to discourage the breeding of a certain class of cattle for the supply of the milk market. The difficulty of guarding against the adulteration of milk may have influenced the legislature in fixing a standard of richness. Practically it makes no difference whether milk is diluted after it is drawn from the cow, or whether it is made watery by giving her such food as will produce milk of an inferior quality, or whether the dilution regarded by the legislature as excessive, arises from the nature of a particular animal or a particular breed of cattle. The sale of such milk to unsuspecting consumers, for a price in excess of its value, is a fraud which the statute was designed to suppress. It is a valid exercise by the legislature of the police power for the prevention of fraud, and protection of the public health, and as such is constitutional:" State v. Campbell, 64 N. H., 402.

In Rhode Island a similar provision has been sustained against an objection to its validity on the ground that it virtually confined the testimony to the analysis of the samples taken by the inspector, which samples were destroyed in making the analysis, so that the testimony could not be controverted. The court was of opinion "that the testimony, though it may not always be practicable to controvert it directly by another analysis, can be controverted by evidence of collateral facts going to prove that the analysis is incorrect, and therefore that the act is not unconstitutional for the reason alleged:" State v. Groves, 1 Atl. Rep., 384. Shivers v. Newton, 45 N. J. L., 469, is to much the same effect.

Intent immaterial. The doing of the act condemned by the law constitutes the offense, if it is silent as to the knowledge or intent of the person who is charged with violating it. People v. Kibler, 106 N. Y., 321, 12 N. E. Rep., 795.

Milk of diseased cows, of cows kept in an unsanitary condition or fed on slops from a distillery or a vinegar factory. Section 4607b—1 (Section 1, chapter 313, laws of 1899.) No person by himself or agent shall offer for sale, furnish or deliver, or have in possession with the intent to sell, or offer for sale, or furnish or deliver, milk or cream drawn from sick or diseased cow or cows kept in filthy and unsanitary condition, or cows fed on refuse or slops from distilleries or vinegar factories, unless such refuse or slop be mixed with other dry sanitary grain or food to a consistency of a thick mush.

Foreign substance not to be added to milk or cream not pasteurized. Section 4607b—2. (Section 2, chapter 313, laws of 1899.) No person by himself or agent shall offer for sale or furnish or deliver or have in possession with the intent to

Digitized by Google

sell, offer for sale, or furnish or deliver, any milk or cream having therein or containing in any amount any foreign substance or coloring matter or any chemical or preservative, whether for the purpose of increasing the quantity of milk or cream or for improving its appearance, or for preserving the condition of sweetness thereof, or for any purpose whatever, provided that nothing in this act shall be construed to prohibit the sale of pasteurized milk or cream, to which viscogen or sucrate of lime has been added solely for the purpose of restoring the viscosity, if the same be distinctly labeled in such manner as to advise the purchaser of its true character

The foregoing section probably repeals in part sec. 4607*b*, Statutes of 1898, which reads as follows: "Any person who shall sell or offer for sale, consign or have in possession with intent to sell any milk, cream, butter, cheese or other dairy products, or who shall deliver to any creamery or cheese factory milk or cream to be manufactured into butter or cheese to which milk, cream, butter, cheese or other dairy products, boracic acid, salicylic acid or compounds containing them, or other antiseptics injurious to health have been added, shall be punished by fine not exceeding one hundred dollars nor less than twenty-five dollars."

Penalty for violating either of the two preceding sections Section 4607b—3. (Section 3, chapter 313, laws of 1899, as amended by ch. 66, laws of 1905.) Any person violating any of the provisions of this act shall, upon conviction, be fined not less than twenty-five dollars nor more than one hundred dollars for each and every offense, or be confined in the county jail not less than thirty days nor more than sixty days.

Unsanitary milk and cream.

CHAPTER 215, LAWS OF 1909.

An Act to repeal sections 4607b—4 to section 4607b—9, inclusive, of the statutes, and to create new sections to be numbered 4607b—4, 4607b—5, 4607b—6, 4607b—7, 4607b—8, aand 4607b—9, relating to unsanitary milk and unsanitary cream and providing a penalty.

The people of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section 4607b—4 to section 4607b—9, inclusive, of the statutes, being chapter 67 of the laws of 1903, as amended by chapter 154 of the laws of 1905, entitled "An Act to Prevent the Sale of Unclean and Unsanitary Milk and the Use thereof in the Manufacture of Food Products, and to Prohibit Unclean and

Digitized by Google

Unsanitary Conditions of Creameries, Cheese Factories and Milk Dealers' Establishments or Outfits," are hereby repealed.

SECTION 2. There are added to the statutes new sections to be numbered section 4607b—4. section 4607b—5, section 4607b—6, section 4607b—7, section 4607b—8, section 4607b—9, to read:

Section 4607b—4. For the purposes of this act, the term "milk" shall mean the fresh clean, lacteal secretion obtained by the complete milking of one or more healthy cows, properly fed and kept, excluding that obtained within eight days before and four days after calving, and contains not less than eight and one-half (8.5) per cent. of solids not fat, and not less than three (3) per cent. of milk fat; and the term "cream" shall mean that portion of milk, rich in milk fat, which rises to the surface of milk on standing, or is separated from it by centrifugal force, is fresh and clean, and contains not less than eighteen (18) per cent. of milk fat.

Milk which shall be drawn from cows that are kept in barns or stables which are not reasonably well lighted and ventilated, or that are kept in barns or stables that are filthy from an accumulation of animal feces and excreta or from any other cause; or milk which shall be drawn from cows which are themselves in a filthy condition; or milk kept or transported in dirty, rusty, or open-seamed cans or other utensils; or milk that is stale, putrescent, or putrid; or milk to which has been added any unclean or unwholesome foreign substance; or milk which has been kept exposed to foul or noxious air or gases in barns occupied by animals, or kept exposed in dirty, foul, or unclean places or conditions, is hereby declared to be unsanitary milk.

Cream produced from any such aforesaid unsanitary milk; or cream produced by the use of a cream separator, which separator had not been thoroughly washed, cleansed, and scalded after previous use in the separation of cream from milk; or cream produced by the use of a cream separator placed or stationed in any unclean or filthy room or place or in any building containing a stable wherein are kept cattle or other animals, unless such cream separator is so separated and shielded by partition from the stable portion of such building as to be free from all foul or noxious air or gases which issue or may issue from such place or stable; or cream that is stale, putrescent, or putrid; or cream that is kept or transported in dirty, rusty, or open-seamed cans or other utensils; or cream which has been kept exposed to foul or nox-

Digitized by Google

ious air or gases in barns occupied by animals, or in dirty, foul, or unclean places or conditions, is hereby declared to be unsanitary cream.

Section 4607b—5. No person shall by himself, his servant, or agent, or as the servant or agent of any other person, or as the officer, servant, or agent of any firm or corporation, sell or offer for sale, furnish or deliver, or have in possession, or under his control with intent to sell or offer for sale, or furnish, or deliver to any person, firm, or corporation as food for man, or to any creamery, cheese factory, milk condensing factory, or milk or cream dealer, any unsanitary milk or any unsanitary cream.

Section 4607b—6. No person shall by himself, his servant, or agent, or as the servant or agent of any other person, or as the servant or agent of any firm or corporation, manufacture for sale any article of food for man from any unsanitary milk or from any unsanitary cream.

Section 4607b—7. All premises and utensils used in the handling of milk, cream, and by-products of milk, and all premises and utensils used in the preparation, manufacture, or sale, or offering for sale of any food product for man from milk or cream or the by-products of milk, which shall be kept in an unclean, filthy, or noxious condition are hereby declared to be unsanitary.

It shall be unlawful for any person, firm, or corporation engaged in selling, or furnishing milk, cream, or any by-products of milk, intended for use as food for man; and it shall be unlawful for any person, firm, or corporation, engaged in selling or furnishing milk, cream, or any by-product of milk, to any creamery, cheese factory, milk condensing factory, or to any place where such milk, cream, or by-products of milk are manufactured or prepared into a food product for man, and for sale as such; and it shall be unlawful for any milk dealer, or an employe of such milk dealer, or any person, firm, or corporation, or the employe of such person, firm, or corporation, who operates a creamery, cheese factory, milk condensing factory, or who manufactures or prepares for sale any article of food for man from milk, cream, or by-product of milk, or who manufactures, re-works, or packs butter for sale as a food product, to maintain his premises and utensils in an unsanitary condition.

Section 4607b—8. Any person, firm or corporation, who receives in cans, bottles, or other vessels any milk, or cream, or other dairy product intended as food for man, which has

Digitized by Google

been transported over any railroad or boat-line or by other common carrier, when such cans, bottles, or vessels are to be returned, shall cause the said cans, bottles, or other vessels to be thoroughly washed and cleansed before return shipment.

Section 4607b—9. Any person who by himself, his servant, or agent, or as the servant or agent of any other person, or as the officer, servant, or agent of any firm or corporation, who violates any provision of this act shall, upon conviction thereof, be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each and every offense, or shall be imprisoned in the county jail not less than thirty days nor more than sixty days

SECTION 3. This act shall take effect and be in force from and after its passage and publication.

Condensed milk. Section 4607b—10. (Sec. 1, ch. 247, 1905.) No person shall manufacture for sale within this state, or offer or expose for sale, have in his possession with intent to sell, or sell or exchange, any condensed milk, sweetened or unsweetened, unless the same shall contain not less than twenty-eight percentum, by weight, of milk solids, of which not less than one-fourth shall be milk fat.

Evaporated or condensed cream. Section 4607b—11. (Sec. 2, ch. 247, 1905.). No person shall manufacture for sale within this state, or offer or expose for sale, have in his possession with intent to sell, or sell or exchange, as and for evaporated or condensed cream, any substance except the product obtained by the evaporation of a portion of water from cream containing not less than eighteen percentum, by weight, of butter fat. Provided, that nothing in this act shall apply to goods manufactured for sale and shipment outside of the state.

Penalty. Section 4607b—12. (Sec. 3, ch. 247, 1905.) Whoever shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not less than thirty days nor more than sixty days.

Filled cheese; oleomargarine: penalties Section 4607c of the Statutes of 1898, as amended by chapter 15[illegible] laws of 1901. Any person who shall by himself, his agent or servant manufacture, buy, sell, offer, ship, consign, expose or have in

Digitized by Google

possession for sale, any cheese manufactured from or by the use of skim milk to which there has been added any fat which is foreign to such milk, or who shall by himself, his agent or servant manufacture, buy, sell, offer, ship, consign, expose or have in possession for sale, within this state, any skimmed-milk cheese or cheese manufactured from milk from which any of the fat originally contained therein has been removed, except such last mentioned cheese is ten inches in diameter and nine inches in height, or who shall, by himself, his agent or servant, render or manufacture, sell or solicit or accept orders for, ship, consign, offer or expose for sale or have in possession, with intent to sell, any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced from unadulterated milk or cream from the same, and without the admixture or addition of any fat foreign to said milk or cream, which shall be in imitation of yellow butter produced from such milk or cream with or without coloring matter, shall for the first offense be punished by fine of not more than five hundred dollars, nor less than fifty dollars, and for each subsequent offense, by imprisonment in the county jail not to exceed sixty days nor less than ten days, or by fine of not more than five hundred dollars nor less than one hundred dollars, or by both such fine and imprisonment. Nothing in this section shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form and in such manner as will advise the consumer of its real character, and free from coloration or ingredient that causes it to look like butter.

Origin. So much of the foregoing as relates to butter is almost an exact copy of sec. 1, ch. 5, acts of Mass., 1891. The words "ship, consign," "and without the admixture or addition of any fat foreign to said milk or cream," "or solicit or accept orders for," found in the section, are not in the Massachusetts act.

Validity. A state may lawfully prohibit the manufacture out of oleaginous substances, or out of any of its compounds other than that produced from unadulterated milk or cream from such milk, of an article designed to take the place of butter or cheese produced from unadulterated milk: People v. Arensberg, 105 N. Y., 123, Commonwealth v. Huntley, 156 Mass., 236; State v. Marshall, 64 N. H., 549; State v. Addington, 77 Mo., 110; Butler v. Chambers, 36 Minn., 69; McAllister v. State, 72 Md., 390; Weideman v. State, 56 N. W. Rep., 688; State v. Horgan, 55 Minn., 183. It may also prohibit the manufacture or sale, or the offering for sale, of any imitation or adulterated butter or cheese, or the having of it in possession with intent to sell the same as an article of food: Powell v. Pennsylvania, 127 U. S., 678.

Though it may be severe to punish those who unintentionally sell the article prohibited, the legislature has power to so provide in order that the much larger number may be protected: State v. Newton, 14 Atl. Rep., 604.

Digitized by Google

Such an act is not void though the oleomargarine sold was brought into the state where the sale was made from another state and was sold in the original package: Commonwealth v. Huntley, 156 Mass., 236; State v. Newton, 14 Atl. Rep., 604. The power of the state to enact such a law is not affected by the legislation of congress imposing special taxes upon manufacturers and wholesale and retail dealers in oleomargarine: Plumley v. Massachusetts, 155 U. S., 461.

The ruling of the United States supreme court. The validity of the Massachusetts statute, so far as it was affected by the clause of the federal constitution giving congress power over commerce, came before the supreme court of the United States in Plumley v. Massachusetts, 155 U. S., 461. It was there held, by a majority of the judges (three dissenting), that the federal statute imposing special taxes upon manufacturers and wholesale and retail dealers in oleomargarine does not restrict the power of the states over the manufacture and sale thereof within their respective limits. "The taxes prescribed by that act were imposed for national purposes, and their imposition did not give authority to those who paid them to engage in the manufacture or sale of oleomargarine in any state which lawfully forbade such manufacture or sale, or to disregard any regulation which a state might lawfully prescribe in reference to that article. . . . Nor was the act of congress relating to oleomargarine intended as a regulation of commerce among the states. Its provisions do not have special application to the transfer of oleomargarine from one state of the union to another. They relieve the manufacturer or seller, if he conforms to the regulations prescribed by congress or by the commissioner of internal revenue, under the authority conferred upon him in that regard, from penalty or punishment so far as the general government is concerned, but they do not interfere with the exercise by the states of any authority they possess of preventing deception or fraud in the sales of property within their respective limits."

The opinion of the court then proceeds to discuss the validity of the statute of Massachusetts as affected by the commerce clause of the federal constitution. "It will be observed," said Justice Harlan, "that the statute of Massachusetts which is alleged to be repugnant to" that clause "does not prohibit the manufacture or sale of all oleomargarine, but only such as is colored in imitation of yellow butter produced from pure unadulterated milk or cream of such milk. If free from coloration or ingredient that causes it to look like butter, the right to sell it 'in a separate and distinct form, and in such manner as will advise the consumer of its real character,' is neither restricted nor prohibited. It appears, in this case, that oleomargarine, in its natural condition, is of a 'light yellowish color,' and that the article sold by the accused was artificially colored 'in imitation of yellow butter.' Now the real object of coloring oleomargarine so as to make it look like genuine butter is that it may appear to be what it is not, and thus induce unwary purchasers, who do not closely scrutinize the label upon the package in which it is contained to buy it as and for butter produced from unadulterated milk or cream from such milk. The suggestion that oleomargarine is artificially colored so as to render it more palatable and attractive can only mean that customers are deluded, by such coloration, into believing that they are getting genuine butter. If any one thinks that oleomargarine, not artificially colored so as to cause it to look like butter, is as palatable or wholesome for purposes of food as pure butter, he is, as already observed, at liberty under the statute of Massachusetts to manufacture it in that state or to sell it there in such manner as to inform the customer of its real character. He is only forbidden to practice, in such matters, a fraud upon the general public. The statute seeks to suppress false pretenses and to promote fair dealing in the sale of an article of food. It compels the sale of oleomargarine for what it really is, by preventing its sale for what it is not."

After reviewing many of the cases cited by the supreme court of the United States and relied upon by counsel for the defendant to support his contention

Digitized by Google

that the statute was void, the opinion uses this language: "In none of the above cases is there to be found a suggestion or intimation that the constitution of the United States took from the states the power of preventing deception and fraud in the sale, within their respective limits, of articles in whatever state manufactured, or that that instrument secured to any one the privilege of committing a wrong against society. . . . If there be any subject over which it would seem that states ought to have plenary control, and the power to legislate in respect to which it ought not to be supposed was intended to be surrendered to the general government, it is the protection of the people against fraud and deception in the sale of food products. Such legislation may, indeed, indirectly or incidentally affect trade in such products transported from one state to another state. But that circumstance does not show that laws of the character alluded to are inconsistent with the power of congress to regulate commerce among the states. For, as said by this court in Sherlock v. Alling, 93 U. S., 99, 103: 'In conferring upon congress the regulation of commerce, it was never intended to cut the states off from legislating on all subjects relating to the health, life and safety of their citizens, though the legislation might indirectly affect the commerce of the country. Legislation, in a great variety of ways, may affect commerce and persons engaged in it without constituting a regulation of it within the meaning of the constitution. . . . And it may be said generally, that the legislation of a state, not directed against commerce or any of its regulations, but relating to the rights, duties, and liabilities of citizens, and only indirectly and remotely affecting the operations of commerce, is of obligatory force upon citizens within its territorial jurisdiction, whether on land or water or engaged in commerce, foreign or interstate, or in any other pursuits.

The opinion of the court then proceeds to point out that the case of Leisy v. Hardin, 135 U. S., 100, in which it was held that ardent spirits, distilled liquors, ale and beer, were subjects of exchange, barter and traffic, and, being articles of commerce, their sale while in the original packages in which they are carried from one state to another, could not, without the assent of congress, be forbidden by the state into which they were transported, was not conclusive of the case before it, because the articles sold in that case were what they purported to be. The opinion of the majority of the court on the Massachusetts statute concluded thus: 'We are of opinion that it is within the power of a state to exclude from its markets any compound manufactured in another state, which has been artificially colored or adulterated so as to cause it to look like an article of food in general use, and the sale of which may, by reason of such coloration or adulteration, cheat the general public into purchasing that which they may not intend to buy. The Constitution of the United States does not secure to any one the privilege of defrauding the public. The deception against which the statute of Massachusetts is aimed is an offense against society; and the states are as competent to protect their people against such offenses or wrongs as they are to protect them against crimes or wrongs of more serious character. And this protection may be given without violating any right secured by the national constitution, and without infringing the authority of the general government. A state enactment forbidding the sale of deceitful imitations of articles of food in general use among the people does not abridge any privilege secured to citizens of the United States, nor, in any just sense, interfere with the freedom of commerce among the several states."

Expose for sale. Under the English statute regulating the sale of margarine it has been held that margarine kept for sale upon the counter of a shop, but behind a screen hiding it from the view of customers, is not exposed for sale (Crane v. Lawrence, 25 Queen's B. Div., 152), and that parcels of margarine placed upon a counter or shelf, in view of customers, are exposed for sale, although so wrapped in paper that the margarine cannot be seen. Wheat v. Brown, [1892] 1 Queen's B., 418.

In Massachuetts, from whence this section was borrowed (see first sentence of note), the court has said, in a case decided in 1893, that whenever goods are

Digitized by Google

placed for convenient delivery upon expected sales they are put out and in one sense exposed for sale. But in our opinion, the words are not so used in the statute under consideration. The prohibited articles are designed and adapted to deceive the eye, and because their appearance is likely to induce those who see them to buy them as the genuine of butter of which they are in imitation, there is special reason for prohibiting their exposure to view. It was held that oleomargarine colored in imitation of yellow butter and kept for sale in a shop so long as it was in a closed and covered refrigerator and could not be seen by customers, was not exposed for sale, notwithstanding there was a sign in the shop to the effect that oleomargarine was sold there. Commonwealth v. Byrnes, 158 Mass., 172.

Sale, what is. A restaurant keeper who furnishes oleomargarine to a customer, as part of a meal ordered by the latter, sells the same, notwithstanding the meal is paid for as a whole and the oleomargarine is not eaten, but carried away: Commonwealth v. Miller, 131 Pa., 118.

A foreign manufacturer who put up oleomargarine in packages evidently adapted for and intended to meet the requirements of an unlawful retail trade in another state, sending them to an agent there for sale to consumers, is not engaged in interstate commerce, but in an effort to carry on a forbidden business: Commonweath v. Paul, 170 Pa., 284.

Ruling of the supreme court of Wisconsin in Meyer v. State, 134 Wis., 156. One of the contentions of plaintiffs in error is: "The court erred in instructing the jury that, although the color of Exhibit A was produced solely by its ingredients they were to consider the claim made by the state that the ingredients were so selected and used in the manufacture of the oleomargarine sold, in such manner and in such quantities and proportion as to produce the oleomargarine so sold which was then and there in imitation of yellow butter." The question whether the article sold by the defendants was the identical thing which is contraband by statute must be determined by the testimony of witnesses who have seen it, or by the testimony of witnesses, aided by an inspection of the article itself, and its resemblance to yellow butter is a factor in such determination. If the article is in imitation of yellow butter, it matters not whether such imitation is brought about by the addition of a dye or by the selection of ingredients. Color is the impression given to the eye by lines of light of various rates of vibration. The reason for the natural color of bodies is a difficult subject, and one that is scarcely yet understood. It has perhaps some relation to the molecular or atomic structure of such bodies, but there is no scientific distinction so far as producing color is concerned between imitating or producing color by the addition of an ingredient known as a dye and added for the purpose alone of producing a given color and the selection and addition of an ingredient which performs the same coloring function, but at the same time adds other qualities to the compound. The words, "which shall be in imitation of," used in describing the contraband compound, imply a conscious imitation in the manufacture thereof. If one forming a compound of several ingredients knowingly select and use an ingredient which imparts to the compound the color of yellow butter, he having choice of ingredients, he will have made his compound in imitation of yellow butter just as well as if he selected a dye. There is, however, this difference, viz., proof of the presence of the dye, which can have no other function than that of producing color shows the conscious imitation quite clearly, while proof of the selection of the ingredients which produced the color of yellow butter, the person selecting having a choice of ingredients, is a fact from which the jury is authorized to infer a conscious imitation notwithstanding such ingredient so selected has other qualities or is in one of its forms or in one of its colors a necessary ingredient of oleomargarine. Whether or not the article in question is in imitation of yellow butter cannot be determined alone by its resemblance to yellow butter, but resemblance aided by evidence of the existence of a dye as one of its ingredients, or resemblance aided by evidence of

Digitized by Google

the existence of available necessary ingredients which will not impart to the compound the color of yellow butter and of the existence of other available ingredients which will impart to the compound the color of yellow butter, may be considered by the jury as establishing or tending to establish conscious imitation by selection of ingredients. What is yellow butter and whether the article in question is in imitation of yellow butter are questions of fact.

* * * * * * * * * * * * *

But upon the error assigned in refusing to direct a verdict of acquittal we are required to pass upon the question whether there was in the case at bar a prima facie case made against the accused, and we think there was, because there was evidence from which the jury was authorized to infer conscious imitation in the manufacture of the compound as herein indicated, and because there was evidence tending to show that the accused had knowledge that the compound in which they were dealing was not butter but oleomargarine, and that it resembled yellow butter. Upon this second branch of the inquiry, resemblance to yellow butter, together with knowledge that the compound is not butter, with proof of the fact of selling, shipping, etc., will constitute a prima facie case. But it will be necessary, of course, to cover by the proof both branches of the inquiry. We, therefore, find no error in refusing to direct a verdict of acquittal.

Notice of sale of imitation butter. Section 4607*d*, Statutes of 1898. Any person who shall sell or offer for sale to any person who asks, sends or inquires for butter, any oleomargarine, butterine or any similar substance made in imitation or semblance of pure butter, not made entirely from the milk of cows, with or without coloring matter, or who shall expose for sale oleomargarine, butterine, or any similar substance not marked and distinguished on the outside of each tub, package or parcel thereof by a placard with the word "oleomargarine," and not having also upon every open tub, package or parcel thereof a placard with the word "oleomargarine," such placard in each case to be printed in plain, uncondensed gothic letters not less than one inch long, and not containing any other words thereon, or who shall sell oleomargarine, butterine or any similar substance from any dwelling, store, office or public mart, without having conspicuously posted thereon the placard or sign, in letters not less than four inches in length, "oleomargarine sold here," or "butterine sold here," which placard or sign shall be approved by the dairy and food commissioner of this state, or who shall sell or deliver from any cart, wagon or other vehicle, upon the public streets or ways, oleomargarine, butterine or any similar substance, without having on the outside of both sides of said cart, wagon or other vehicle a placard, in uncondensed gothic letters not less than three inches in length, "licensed to sell oleomargarine," or who shall furnish or cause to be furnished in any hotel, boarding-house, restaurant or at any lunch counter, oleomargarine, butterine or any similar substance to

Digitized by Google

any guest or patron thereof, without first notifying such guest or patron that the substance so furnished is not butter, shall be punished as provided in the last preceding section.

Validity. It is "within the undoubted power of the legislature to prohibit the sale of substances having the semblance of butter or cheese, but not wholly made from pure cream or milk, unless each package of such substance should have printed, stamped or marked thereon, in the manner prescribed by the statute, the name of each article used in, or entering into, the composition of such substance, and this power is possessed by the legislature over the sale of articles protected by letters patent as well as of those not protected:" Palmer v. State, 39 Ohio St., 237.

Notice. The provisions requiring notice are much like the corresponding clauses in ch. 412, Mass. acts, 1891, and have been held not to be in conflict with the federal statute authorizing the sale of oleomargarine: Commonwealth v. Crane, 158 Mass., 218.

Notice given by printed signs and on the bills of fare satisfies the statute; it need not be given, either orally or in writing, to each guest on every occasion when he is furnished with oleomargarine or butterine in the stead of butter: Commonwealth v. Stewart, 159 Mass., 113.

Sale by agent. The Massachusetts statute in terms provides that the penalty imposed for the sale of oleomargarine which is not labeled as it prescribes shall be imposed whether the sale is made by the vendor or his agent. It is held not to be a defense to show that the sale by the agent of an unmarked package or quantity was made through inadvertence; a guilty intent is not an element in the offense: Commonwealth v. Gray, 150 Mass., 327.

Oleomargarine. The defendant in a prosecution for selling oleomargarine from a wagon without having the placard required cannot escape liability because that sold by him is usually known as oleomargarine, looks like pure butter and is not easily distinguished therefrom, and the other kind is dishonestly and designedly made in imitation of the best pure butter. The statute applies to all kinds: Commonwealth v. Crane, 162 Mass., 506.

Imitation butter and cheese in state institutions. Section 4607*e*, Statutes of 1898. Any person who shall knowingly or negligently buy or procure for use as food in any of the charitable, correctional or penal institutions of this state any butter or cheese not made wholly and directly from pure milk or cream, salt and harmless coloring matter, shall be fined not exceeding fifty dollars nor less than twenty-five dollars for the first offense, and for each subsequent offense shall be punished by imprisonment in the county jail not more than ninety days nor less than ten days, or by fine not exceeding one hundred dollars nor less than fifty dollars, or by both fine and imprisonment.

Renovated butter; how marked. Section 4607d—1. (Sec. 1, ch. 76, 1899, as amended by ch 34, 1905.) No person shall, himself, or by his agent or servant, sell, offer or expose for sale, or have in his possession with intent to sell, or exchange

Digitized by Google

or deliver renovated butter, or butter which has been melted and its rancidity removed or masked, and which has been regranulated, colored and prepared in imitation or in semblance of genuine creamery butter, unless the substance shall have the words "Renovated Butter" conspicuously stamped, labeled or marked in one or two lines and in plain Gothic letters, at least three-eighths of an inch square, so that the words cannot be easily defaced, upon two sides of each and every tub, firkin, box or package containing said renovated butter; or, if such butter is exposed for sale uncovered, or not in a case or package, a placard containing said words in the same form as above described in this section shall be attached to the mass in such a manner as to be easily seen and read by the purchaser; and when renovated butter is sold from such package or otherwise at retail, in print, roll or other form, before being delivered to the purchaser, it shall be wrapped in wrappers plainly stamped on the outside thereof with the words "Renovated Butter," printed or stamped thereon in one or two lines and in plain Gothic letters at least three-eighths of an inch square, and such wrapper shall contain no other words or printing thereon, and said words "Renovated Butter" so stamped or printed on the said wrapper shall not be in any manner concealed, but shall be in plain view of the purchaser at the time of the purchase.

Penalty. Section 4607d—2. (Sec. 2, ch 76, 1899.) Any person who shall violate any of the provisions of this act (the preceding paragraph) shall be guilty of a misdemeanor, and upon conviction thereof, be fined not less than twenty-five nor more than one hundred dollars.

Adulterated honey; penalty. Section 4607f—1. (Sec. 1, ch. 229, 1905.) No person shall, himself, or by his agent or servant, sell, offer or expose for sale or have in his possession with intent to sell as and for honey any substance whatsoever that is not the legitimate and exclusive product of the honey bee, to-wit, the nectar of flowers, honey dew and natural saccharine exudations of plants gathered and stored in the comb by bees. Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not less than thirty days nor more than sixty days.

Digitized by Google

Sale, etc., of diseased meat, killing diseased animal, etc. Section 4607*g*. Any person who shall sell or expose for sale, or give away for use as food, or can or pack for the purpose of transportation to and sale in any market or place any unwholesome, stale, emaciated, blown, tainted, putrid or measly meat, or the flesh of any diseased animal or of any animal not slaughtered for the purpose of food knowing or having good reason to believe that such meat is as above described, or that such flesh is the flesh of a diseased animal or of an animal not slaughtered for such purpose, and any person or corporation owning or operating any slaughter-house or packing establishment in this state who shall receive for the purpose of killing, or kill, any diseased animal, or render the carcass of any animal that shall die by disease or in consequence of exposure, or that shall not have been slaughtered for food, knowing or having good reason to believe that such animal was diseased, or had died from disease or in consequence of exposure, or had not been slaughtered for food, such person shall be punished by imprisonment in the county jail not exceeding six months nor less than ten days, or by fine of not more than one hundred dollars nor less than ten dollars, or both, and such corporation shall be fined not more than five hundred dollars nor less than ten dollars.

Obstructing dairy and food officers; penalty. Section 4607h. (As amended by ch. 78, 1907.) Any person who shall obstruct the dairy and food commissioner of this state or either of his assistants, chemists or inspectors in the performance of their duty by refusing him entrance to any place he is authorized to enter or by refusing to deliver to him a sample of any article of food, drink or drug made, sold, offered, or exposed for sale by the person to whom request therefor is made if the value thereof is tendered, shall be * * * guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten days nor more than sixty days.

Sale of vinegar; standards therefor; penalty. Section 4607i. (As amended by ch. 297, 1905, as amended by ch. 370, 1907.) No person shall sell, manufacture for sale, offer or expose for sale or have in his possession with intent to sell as apple, orchard or cider vinegar, any vinegar which has not been made exclusively by the fermentation of pure apple juice,

Digitized by Google

known as apple cider; or vinegar which contains any foreign substance whatsoever; or vinegar which shall contain less than * * * four per centum by weight of absolute acetic acid; or vinegar which shall be found to contain less than one and * * * six tenths per centum by weight of pure cider vinegar solids upon full evaporation at two hundred and twelve degrees Fahrenheit and no person shall sell, offer or expose for sale or have in possession with intent to sell any cider vinegar unless each barrel, cask, * * * keg, or other original package or original container, containing the same, be plainly stenciled or branded or labeled, * * * with the words "Cider Vinegar," together with the name and place of business of the manufacturer thereof, and the strength of the vinegar contained in said barrel, cask, * * * keg or other original package or original container, containing the same, which strength shall be denoted by the per centum by weight of absolute acetic acid contained in said vinegar. And no person shall manufacture for sale, offer or expose for sale or have in possession with intent to sell, or sell, any vinegar which shall be adulterated within the meaning of sections 4600 and 4601 of the statutes of 1898, and laws amendatory thereof; or any vinegar which shall contain less than four * * * per centum by weight of absolute acetic acid; or vinegar which shall contain any artificial coloring matter or any preparation of lead, copper, sulphuric or other mineral acids, or any acid made from the distillation of wood or any ingredient injurious to health And no person shall sell, offer or expose for sale or have in his possession with intent to sell any vinegar (except cider vinegar) made by fermentation without the intervention of distillation unless each barrel, cask, * * * keg, or other original package or original container, containing the same, be plainly stenciled or branded or labeled, * * * with the name and place of business of the manufacturer of said vinegar, and the strength of the vinegar contained in said barrel, cask, * * * keg, or other original package or original container, containing the same, which strength shall be denoted by the per centum by weight of absolute acetic acid contained in said vinegar, together with the words "Fermented Vinegar" and the true name of the fruit or substance from which said vinegar is made And no person shall sell, offer or expose for sale or have in his possession with intent to sell any vinegar made wholly or in part from distilled liquor unless each barrel, cask, * * * keg, or other original package or original container, containing the same, be plainly

Digitized by Google

stenciled or branded or labeled, * * * with the words * * * "Spirit Vinegar," together with the name and place of business of the manufacturer or dealer thereof and the strength of the vinegar contained in said barrel, cask, * * * keg, or other original package or original container, containing the same, which strength shall be denoted by the per centum by weight of absolute acetic acid contained in said vinegar. And no person shall sell, offer or expose for sale or have in his possession with intent to sell, any vinegar unless the stencil, brand or label hereinbefore required shall in the case of barrel, cask or keg be in black letters and figures at least one inch in height on one head of said barrel, cask or keg, and in case of other original package or original contanier in black letters and figures not smaller than eight-point Brevier caps on the outside of each original package or original container thereof.

Any person who shall be found guilty of violating any of the provisions of this section shall * * * be guilty of a misdemeanor and on conviction shall be punished by fine not less than twenty-five dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten days nor more than sixty days.

Coloring matter. It is competent for the legislature to make it a misdemeanor to add artificial coloring matter to vinegar, regardless of whether the matter added is injurious to the health of the consumer or not: People v. Girard, 73 Hun (N. Y.), 457.

Where, in the manufacture of vinegar, low wine, formed from fermented grain, is, previously to its acetification, passed through roasted malt, not for the purpose of adding any substantial ingredient to the vinegar, but for the purpose of giving it color as well as aroma and flavor, and without such treatment the vinegar would be colorless, the vinegar so produced contains artificial coloring matter: Weller v. State, 53 Ohio St., 77.

Validity. It is provided by a Michigan law (Public Acts of 1897, No. 71), "that no person shall manufacture for sale, offer or expose for sale, sell or deliver, or have in his possession with intent to sell or deliver, any vinegar not in compliance with the provisions of this act. No vinegar shall be sold as apple, orchard or cider vinegar which is not the legitimate product of pure apple juice, known as apple cider or vinegar not made exclusively of said apple cider or vinegar into which foreign substance, drugs or acids have been introduced, as may appear upon proper tests, and upon said tests shall contain not less than one and three-fourths per cent., by weight, of cider vinegar solids upon full evaporation at the temperature of boiling water." That "all vinegar made by fermentation and oxidation without the intervention of distillation, shall be branded 'fermented vinegar,' with the name of the fruit or substance from which the same is made. And all vinegar made wholly or in part from distilled liquor shall be branded 'distilled vinegar,' and all of such distilled vinegar shall be free from coloring matter added during or after distillation, and from color other than imparted to it by distillation. And all fermented vinegar not distilled shall contain not less than one and three-fourths per cent., by weight, upon full evaporation (at the temperature of

Digitized by Google

boiling water) of solids, contained in the fruit or grain from which said vinegar is fermented, and said vinegar shall contain not less than two and a half-tenths of one per cent. ash or mineral matter, the same being the product of the material from which said vinegar is manufactured. And all vinegar shall be made wholly from the fruit or grain from which it purports to be or is represented to be made, and shall contain no foreign substance, and shall contain not less than four per cent., by weight, of absolute acetic acid."

Under that law it was held, 1. That cider vinegar must contain the required quantity of ash or mineral matter as well as the stated per cent. of cider vinegar solids. 2. That the act could not be declared void as beyond the police power of the state because it imposed an unreasonable and arbitrary test, that being a question for the legislature. 3. That it was not for the jury or the court to determine from expert chemical testimony whether the act was unreasonable. 4. That a person convicted of violating the act was not deprived of property without due process of law because he could not obtain a sample of the vinegar in question for analysis, he not being so prevented by any person connected with the prosecution, and the law not requiring that the accused be furnished with a sample. 5. That the law was violated by the sale of vinegar below the standard, though the seller was not aware of the fact that the vinegar sold was of that character: People v. Worden Grocer Co., 77 N. W. Rep., 315.

Cleanliness of dairy cows and utensils; penalty. Section 4607*j*. Any person owning or managing a dairy, the product of which is sold for family use, who shall feed his cows upon unwholesome food or keep them in unclean stables or handle the milk with unclean utensils shall be deemed guilty of a misdemeanor and upon conviction thereof be fined not less than twenty-five dollars nor more than one hundred dollars for the first offense, and not less than one hundred dollars nor more than two hundred dollars for each subsequent offense.

Sale of impure ice; notice of place where ice was cut. Section 4607*k*. No person or corporation shall sell or offer for sale or cause the same to be done within this state, for domestic, culinary or drinking purposes, any ice which contains mud, decayed vegetation, animal or foreign matter or malarial substance. Every person or corporation offering ice for sale shall have posted on his or its wagons, in a conspicuous manner, the name of the place from which the ice so offered for sale was cut, harvested or manufactured, and all persons or corporations dealing in or handling impure ice, to be used for cooling purposes only, shall have their wagon so labeled. Any person who or corporation which violates any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than fifty dollars or more than one hundred dollars.

Antiseptics, etc, in meat products; penalty. Section 4608 l. (Sec. 1, ch. 243, 1901, and ch. 261, 1905.) Any person who by

Digitized by Google

himself or his agent shall offer or expose for sale, take orders for, or sell, or have in his possession with intent to sell for use or consumption within the state any sausage or chopped meat compound containing any artificial coloring, or chemical preservative or antiseptic, except common salt, saltpetre, spices or wood smoke shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty-five dollars nor more than one hundred dollars.

Sale of maple sugar and maple syrup regulated. Section 4608m. (Ch. 151, 1905.) Any person who shall manufacture for sale, sell, or offer or expose for sale, or have in his possession with intent to sell, as and for maple sugar or maple syrup, any article other than the unadulterated product produced by the evaporation of pure sap from the maple tree, shall forfeit to the state of Wisconsin, the sum of not less than twenty-five dollars nor more than one hundred dollars.

Buckwheat flour. Section 4608p (Sec. 1, ch. 187, 1905.) No person shall manufacture for sale within this state, or offer or expose for sale, have in possession with intent to sell or sell or exchange any ground buckwheat containing any product of wheat, corn, rice or other foreign substance, unless each and every package thereof shall be distinctly branded or labeled in letters not less than one-half inch in length with the name of the maker and factory, and the location of such factory, and the words "Buckwheat Flour Compound," together with the words, "This buckwheat flour compound contains the following ingredients and none other" and immediately after the latter words shall appear in the same size letters the true names of each and every ingredient of such mixture or compound. Provided, that this act shall not be construed as prohibiting the manufacture and sale of Self-Rising Buckwheat Flour when labeled or branded as such and when the same consists only of pure buckwheat flour, salt, sodium bicarbonate and calcium acid phosphate, cream of tartar or tartaric acid.

Labels. Section 4608q (Sec. 2, ch. 187, 1905.) Any brand or label herein required shall be an inseparable part of the general or distinguishing label, and such label shall be that principal and conspicuous sign under which it is sold, and any other label or printed matter upon the package shall not be in contravention of the requirements of this act.

Digitized by Google

Presumption. Section 4608r. (Sec. 3, ch. 187, 1905.) The having in possession of any buckwheat flour compound, which is not branded or labeled as hereinbefore required and directed upon the part of any person engaged in the public or private sale of such article, shall, for the purpose of this act, be deemed prima facie evidence of intent to sell the same.

Sale, what. Section 4608s. (Sec. 4, ch. 187, 1905) The taking of orders or the making of agreements or contract by any person, firm or corporation or by any agent or representative thereof, for the future delivery of buckwheat flour compound shall be deemed a sale within the meaning of this act.

Penalty. Section 4608t. (Sec. 5, ch. 187, 1905.) Any person who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than thirty nor more than ninety days, or by both such fine and imprisonment, in the discretion of the court.

Lemon and vanilla extracts. Section 4608u. (Ch. 228, 1905.) Any person who shall manufacture for sale, sell, or offer or expose for sale or have in his possession with intent to sell as and for lemon extract, or extract of lemon, or essence of lemon or lemon essence, or spirits of lemon, or under any designation which includes any of the aforesaid names any preparation other than a solution containing not less than five percentum, by volume, of pure lemon oil in ethyl alcohol; or any person who shall manufacture for sale, sell, or offer or expose for sale or have in his possession with intent to sell as and for vanilla extract, or extract of vanilla or tincture of vanilla, or vanilla tincture, or under any designation which includes any of the aforesaid names any preparation which shall contain any flavoring or coloring ingredient other than those derived from pure vanilla bean, shall forfeit to the state of Wisconsin the sum of not less than twenty-five dollars nor more than one hundred dollars. Providing nothing in this act shall prohibit the manufacture of the above specified articles for sale and shipment without the state.

Quarterly bulletins. Section 335c. (Ch. 519, 1907.) The said dairy and food commissioner may also, with the consent of the governor, and in accordance with the laws regulating

Digitized by Google

the printing and publication of public documents or bulletins, prepare, print and distribute to such persons as may be interested, or may apply therefor, a quarterly or semi-annual bulletin in suitable paper covers, containing results of inspections, results of analyses made by the chemist for the dairy and food commission, with popular explanations of the same and such other information as may come to him in his official capacity, relating to the adulteration of food, drug and drink products and of dairy products so far as he may deem the same of benefit and advantage to the public; also a brief summary of the work done during the quarter by the commissioner and his assistants in the enforcement of the dairy and food laws of the state; but not more than fifteen thousand copies of each such quarterly bulletin shall be printed.

Digitized by Google

SUPREME COURT DECISIONS.

The following compilation of supreme court decisions is taken from the report of Commissioner Jones of Illinois, 1906.

The following compilation of Supreme Court decisions is given that the rules for construing food laws may be understood and that the public may know what protection they have, and dealers may know to what extent and when they are liable under the laws, as construed by courts of last resort, and the first to be considered and the one most frequently presented is the question of intent.

IGNORANCE OF FACT OF ADULTERATION DOES NOT EXCUSE DEALER.

That a dealer may not know that an article sold or offered for sale is adulterated and yet be liable to punishment for selling or offering the same for sale, when selling or offering for sale, or having in possession with intent to sell, is prohibited by statute, I think well settled, as will be seen by an examination of the compilation of authorities hereinafter set forth and the rules as well as the reason therefor will be found in the case of State vs. Kelly, 54 O. S., 166, as follows:

At page 177 the Court states that the law under which the prosecution was brought, it being the first section of the Act of March 20, 1884 (Sec. 3805—1, rev. statutes), "That no person shall, within this State, manufacture for sale, offer for sale or sell any drug or article of food which is adulterated within the meaning of this Act."

Further on, at page 178, the Court reasons:

The Act is not a provision for the punishment of those who sell adulterated foods or drugs, because of any supposed turpitude prompting such sales. Its purpose is indicated by its title. It is "An Act to provide against the adulteration of foods and drugs." It is a plan devised by the General Assembly to protect the public against the hurtful consequences of the sales of adulterated foods and drugs, those consequences being in no degree increased by the vendor's knowledge or diminished by his ignorance of the adulteration of the articles which he offers for sale. The provisions of the Act are appropriate to the purposes indicated by its title. It would have been inconsistent with that purpose to provide for the trial of such immaterial issues as the object of the vendor in making a sale or of the extent of his knowledge touching the quality of the article sold. Those who produce the adulterated articles whose sale is forbidden may live without the State. Purpose and knowledge, except when they are indicated by the character of the forbidden act, are, in most cases, insusceptible of proof. If this statute had imposed upon the State the burden of proving the purpose of the vendor in selling an article of food or his knowledge of its adulteration, it would thereby have defeated its declared purpose. Since it is the duty of courts to so construe doubtful statutes as to give effect to the purpose of the Legislature, they can-

Digitized by Google

not in case of a statute whose provisions are unambiguous and whose validity is clear, defeat its purpose by construction.

The Court further along, citing cases, reasons:

In Commonwealth vs. Farren, 9 Allen, 489, in construing a statute which provides that "whoever sells or keeps or offers for sale adulterated milk or milk to which water or any foreign substance has been added" shall be punished as provided. It was held that it is not necessary either to allege or prove that the accused knew that the milk he offered for sale was adulterated. With respect to a similar statute the same conclusion was reached in State vs. Smith, 10 R. I., 258. If knowledge of the adulteration were an element of the offense, it would be incumbent upon the State to establish it; but since it is not, the defendant could derive no advantage from any evidence tending to show the absence of such knowledge.

And the Court concluded this decision on page 180 with the following language:

In the enactment of this statute, it was the evident purpose of the General Assembly to protect the public against the harmful consequences of the sales of adulterated food and drugs, and, to the end that its purpose might not be defeated, to require the seller at his peril to know that the article which he offers for sale is not adulterated, or to demand of those from whom he purchases indemnity against the penalties that may be imposed upon him because of their concealment of the adulteration of the articles.

It is a well settled principle of law, established by an almost unvarying current of authorities both in this country and England, that guilty knowledge on the part of the seller need not be averred and proved, unless it is an essential element in the offense charged. In the opinion just delivered by the circuit court of Summitt county, in David Meyer vs. The State, 10 C. C. R., 226, Hale, J., says: "It may be fairly inferred that the legislature of the state intended by this positive enactment to prohibit absolutely the sale of adulterated wine, and that knowledge by the accused of its adulteration is not an essential element of the crime. It must be conceded that the object and purpose of this statute, if not wholly subverted, would be weakened to that extent that it would in nowise accomplish the results intended by its enactment, if the accused may go acquit by simply showing that he did not know the nature of the article sold. Food is sold to be consumed. The purchaser is under no obligation to analyze the article purchased for that purpose, to ascertain whether it contains substance injurious to health, nor would it be practicable for him to do so, and it should be no answer to his complaint that the seller had no knowledge of the impurity; nor should it be a defense to the seller when called to account by the state to answer that he was ignorant of the substance he was selling. We see no injustice in holding the seller of food products responsible for what he sells, and in casting upon him the burden of knowing whether the food does, or does not, fall within the prohibition of the statute, with that care and honesty which is incumbent on the seller of such products."

In People vs. Kibler, 106 N. Y., 321, the defendant was charged with selling adulterated milk. The defendant was not permitted by the trial court to show an absence of criminal intent, or to go to the jury upon the question whether it existed, but was condemned under a charge which made his intent wholly immaterial, and his guilt consists in having sold the adulterated article, whether he knew it or not. Finch, J., in delivering the opinion of the court, said:

"As the law stands, knowledge or intention forms no element of the offense."

This legislation is justified on the ground that use of the inhibited "articles used for food and drink by man," is injurious to the public health; and particularly because the adulterated articles of food and drink cannot be easily distinguished from the genuine, and are so readily substituted for it, as to work a fraud upon all the people who actually use and consume such articles

Digitized by Google

and things, as well as upon purchasers of the counterfeit food, in place of the genuine food and drink.

Any article of food or drink either manufactured or sold as being what it is named, would indicate to the public that it is a genuine article of its kind and species, which, if not pure and free from adulteration of every kind, would fairly come within the spirit and object of the Act, without reference to the extent of such adulteration, or the peculiar process of manufacture, and though the product be wholly similated.

The enactment of laws for the protection of the public from fraud and deception in articles "used for food and drink by man, whether simple, mixed or compound," is a legitimate, needful and necessary exercise of the police power of the State by the Legislature. Such legislation is clearly within the scope of legislative authority conferred by the Constitution of Illinois.

"A fraud is, of course, a trespass upon another's private rights, and can always be punished when committed. It is, therefore, but rational to suppose that the State may institute every reasonable preventive remedy when the frequency of frauds or the difficulty experienced in circumventing them is so great that no other means will prove efficacious. Where, therefore, police regulations are established which give the private parties increased facilities for detecting and preventing fraud as a general proposition, these laws are free from all constitutional objections." Tiedman on Police Lim., 207.

FOODS.

WHAT ARE ADULTERATIONS?

Adulteration is the corruption by mixture with some foreign substance or with what is less valuable. People vs. West, 44 Hun. (N. Y.), 162; Com. vs. Hough, 1 Pa. Dist. Rep., 51.

Addition of water is adulteration. Com. vs. Scheffner, 146 Mass., 512.

Persons making sales of adulterated food which is prohibited by statute to be sold do so at their peril. It is within the valid exercise of the police power of a state to enforce a penalty for the sale of adulterated articles of food or drink *even though the seller had no knowledge of the adulteration.* People vs. Snowberger, 113 Mich., 86; People vs. Worden Grocery Co., 118 Mich., 604; State vs. Kelly, supra; Bissman vs. State, 9 Ohio C. C., 714; Com. vs. Farran, 9 Allen (Mass.), 489; Same vs. Nichols, 10 Allen (Mass.) 190; Same vs. Evans, 132 Mass., 11.

Statutes prohibiting sale of adulterated provisions are valid. State vs. Marshall, 64 N. H.

Persons furnishing provisions for market liable for violations. Hunter vs. State, 1 Head (Tenn.), 160; People vs. Parker, 88 N. Y., 35.

Adulterated food need not be shown to have produced sickness to convict. Goodrich vs. People, 19 N. Y., 577; Com. vs. Kolb, 13 Pa. Super. Ct., 347.

The master is liable for sale by servant. Com. vs. Gray, 150 Mass., 327; Com. vs. Warren, 160 Mass., 533; Com. vs. Veith, 155 Mass., 442; Bissman vs. State, 9 Ohio C. C., 714.

Possession by servant is possession by master. Com. vs. Proctor, 165 Mass., 38.

Penalty may be recovered in civil suit and is not crime. State vs. Grove, 77 Wis., 448; Cloud vs. Hewitt, 5 Fed. Cases, 1983.

A food inspector cannot compel, by injunction a manufacturer to sell an article of food for analysis, his remedy is by prosecuting under section for refusing to furnish. State vs. Capital City Dairy Co., 62 Ohio St., 123.

Possession of adulterated tea for sale is nuisance. Health Department vs. Purdon, 99 N. Y., 237.

To offer liquid chicory and coffee as "liquid coffee" is offense against food law. State vs. Dreher, 55 Ohio St., 115.

Selling raspberry syrup containing salcylic acid is violation and question whether injurious to health or not is not material. Com. vs. Kevin, 1 Penn. Supr. Ct., 414.

Digitized by Google

Any person may make complaint of violations of food laws. Isenhour vs. State, 157 Ind., 517; Com. vs. Mullen, 176 Mass., 182.

Under statute as to sale of article it is not necessary to allege that factory was a "full cream" factory where the sale was for selling skim milk to other than "skim milk" factory. People vs. Spees, 46 N. Y. Supp., 995.

Official character of chemist established prima facie by his testimony. Vandergrift vs. Niehla (N. J., 1901), 49 A., 16.

LARD.

Law requiring lard to be labeled stating ingredients, etc., is valid. State vs. Snow, 81 Iowa, 642; State vs. Aslesen, 50 Minn., 5.

Cottolene manufactured to resemble lard should be marked "Lard Substitute" under statute requiring lard substitutes to be so labeled. State vs. Hansen (Minn.), 54 L. R. A., 468.

VINEGAR.

Standard may be fixed and vinegar must comply. People vs. Worden Grocery Co., 118 Mich., 604.

Adulteration and artificial coloring of vinegar may be prohibited. Weller vs. State, 85 Ohio St., 259.

Coloring vinegar during manufacture is artificial color. Weller vs. State, Supra.

Act forbidding manufacture and sale of vinegar containing artificial matter is valid. People vs. Girard, 145 N. Y., 105.

LIQUORS.

It is not unconstitutional to prohibit the sophistication or adulteration of wine. Ex parte Kohler, 74 Cal., 38.

Law prohibiting manufacture of beer or malt liquor from substances, etc., other than hops, etc., is accurate though it does not name water as proper material. State vs. Bixman, 162 Mo., 1.

If beer contains salicylic acid and is not so labeled and it is by constant use injurious to health, it is an offense to sell the same under the food laws as to adulteration.

Whiskey is a drug under adulteration clause. It is offense to adulterate whisky even though sold as beverage. State vs. Hutchinson, 56 Ohio, 82; Same vs. Same, 55 Ohio, 573.

On prosecution for sale of adulterated whiskey it is immaterial that it was by saloon keeper and as a beverage. State vs. Hutchinson, 56 Ohio St., 82.

It is not necessary to show that the acid in wine is injurious to health in order to sustain prosecution for selling adulterated food and drink. The putting of acid therein is an adulteration. State vs. Hays, 7 Ohio N. P., 624.

To sustain conviction for selling adulterated wine it is not necessary to prove seller knew it was adulterated. Altschul vs. State, 8 Ohio Cir. Ct. Rep., 214.

Agent of principal who is now resident is liable if he only sends order to principal to ship goods to buyer. Meyer vs. State, 54 Ohio St., 242.

BAKING POWDER.

The formula of baking powder may be required—no man has the constitutional right to keep secret the composition of substances he sells to public as food. State vs. Aslesen, 50 Minn., 5; State vs. Sherod; State vs. Horrigan, 80 Minn., 446; State vs. O'Grady.

Alum baking powder must be marked as required by law. Stolz vs. Thompson, 44 Minn., 271.

Digitized by Google

STANDARDS.

Laws providing for board of health to make minimum standard is not unconstitutional and the law took effect because of the power that made the law and the taking effect was only delayed till the standard was made. Isenhour vs. State, 157 Ind., 517; City of Gloverville vs. Enos, 72 N. Y. St., 398.

DAIRY PRODUCTS.

The adulteration of milk may be prohibited although it be sold openly, fairly and with notice and although the adulteration is harmless. State vs. Schlenker, 112 Iowa, 642.

Term milk includes cream and addition of boracic acid is adulteration. Com. vs. Gordon, 159 Mass., 8.

If percentage of water in milk is fixed at not more than 87 per cent and milk solids not less than 13 per cent if it contains a greater per cent of water must be sold as skim milk, and if not seller is liable. Com. vs. Tobias, 149 Mass., 129.

In prosecution for selling adulterated milk it is immaterial how quantity of milk solids have been reduced below standard. Com. vs. Bowers, 140 Mass., 483.

To convict for selling adulterated milk it is sufficient to show that glass of adulterated milk was sold. Com. vs. Veith, 155 Mass., 442; Com. vs. Warren, 160 Mass., 533.

Act prohibiting sale of adulterated milk is constitutional. State vs. Schlenker, 112 Iowa, 642.

Milk or cream taken from man from wagon at early hour in morning; held, defendant was offering cream for sale under the evidence submitted. People vs. Hills, 72 N. Y., 340.

Affidavit charging defendant in possession of adulterated milk although it does not charge that he adulterated it is good. Isenhour vs. State, 157 Ind., 517.

Proof of criminal intent is unnecessary. Com. vs. White, 11 Allen, (Mass.), 264; Com. vs. Smith, 103 Mass., 444; Com. vs. Warren, 160 Mass., 553; Com. vs. Veith, 155 Mass., 442.

The keeping or offering for sale or having in possession with intent to sell of adulterated milk is violation of law. People vs. Justice, 7 Hun. (N. Y.), 214; Polinsky vs. People, 73 N. Y., 65.

A law which requires all milk to come up to a certain standard is a valid exercise of police powers. Deems vs. Mayor, 80 Md., 164; State vs. Crescent Creamery Co., 83 Minn., 284; Kansas City vs. Cook, 80 Mo. App., 660; State vs. Campbell, 64 N. H., 402; State vs. Smith, 14 R. I., 100; 51 Am. Rep., 344; Baker vs. Luther, 20 R. I., 472.

It is not necessary to show that a person selling milk knows that is below the legal standard. The legislature has the power to pass a law, the violation of which may be punished without regard to motive or knowledge on the part of violator. Vandergrift vs. Niehla, (N. J., 1901), 49 A., 16; State vs. Schlenker, 12 Ia., 642; People vs. Schaeffer, 41 Hun. (N. Y.), 23; Same vs. Cipperly, 101 N. Y., 634; Same vs. Kibler, 106 N. Y., 321; Same vs. Eddy, 12 N. Y. Supp., 628.

Regulation of the sale of dairy products by law is constitutional. Holtgrieve vs. State, 7 Ohio N. P., 389.

Cans or vessels from which skimmed milk is sold must be labeled as provided by law. Com. vs. Hugh, 1st Pa. Dist. Rep., 51.

Milk delivered to a purchaser of a meal as a part thereof is a sale as though bought and paid for apart from the meal. Com. vs. Warren, 160 Mass., 553.

It is not unconstitutional to declare by law that a certain class of people shall not sell impure milk within the city or village even though the law is not intended to apply to other persons who sell milk in the country. State vs. Broadbelt, 89 Md., 565.

Digitized by Google

Vendors of milk may be required to register. City of Gloversville vs. Enos, 72 N. Y. St., 898.

An honorably discharged soldier must register before receiving license. City of Gloversville vs. Enos, Supra.

It is not necessary to show the particular manner in which analysis was made. Vandergrift vs. Niehla, (N. J., 1901), 49 A., 16.

The state may fix an arbitrary standard below which milk can not be sold and evidence that the milk was below that standard when given by the cow is not a defense. State vs. Campbell, 64 N. H., 402.

Evidence that defendant's cows were properly fed is not admissible to discredit chemist's analysis. State vs. Campbell, Supra.

Evidence that defendant on a wagon had a license and had milk can in one of which was adulterated milk is sufficient evidence that he was in possession of adulterated milk with intent to sell the same. Com. vs. Rowell, 146 Mass., 128.

Evidence that defendant was on street in a wagon at an early hour with several cans from one of which inspector took a sample which can was not marked "Skimmed Milk" and the milk on analysis was below standard is sufficient evidence to show an intent to sell the milk in the wagon. Com. vs. Smith, 142 Mass., 169.

When the law requires the record of an analysis to be made and preserved as evidence and a certificate of such analysis sworn to by the analyst is made admissible in evidence against a defendant an averment that the milk was not of the standard quality, is sufficient. Com. vs. Lapham, 156 Mass., 480.

The evidence of the person who analyzed the milk and who is shown to have sufficient skill to analyze milk is admissible. Com. vs. Holt, 146 Mass., 38.

The state may authorize the analysis of milk and evidence thereof may be given in even though the milk has been destroyed. State vs. Campbell, 64 N. H., 402.

Evidence of a test of milk even though made nearly a year after the sale of the milk, is admissible. Stearns vs. Ingraham, 1 Thomp. & Co. (N. Y.), 218.

CHEESE.

Evidence that cheese made from milk, which was lumpy and bloody, is bloated and puffed and inferior in quality and that some cheese manufactured from milk furnished by the defendant in common with others was so bloated and puffed is sufficient to show that the milk furnished by the defendant was lumpy or bloody. Bilgrien vs. Dowe, 91 Wis., 393.

States requiring cheese to be branded with the name and address of the manufacturer and the kind of cheese it is, is valid and the lettering must be the required size. 6th Pa. Dist. Rep., 689.

If cheese is made out of the state the dealer may brand with his name and address. 20 Pa., Co. Ct., 61.

OLEOMARGARINE.

An Act which prevents the manufacture or sale of imitation butter or cheese does not violate the rights of a patentee or manufacturer. 39 Ohio St., 236; Palmer vs. State, 48 Am. Rep., 429; State vs. Capital City Dairy Co., 62 Ohio St., 350; 22 S. Ct., 120; Com. vs. Diefendacher, 14 Penn. Super. Ct., 264.

Oleomargarine must be marked as provided by law. Haines vs. The People, 7 Colo. App., 467; State vs. Dunbar, 13 Ore., 591.

Statutes which prohibit the manufacture of substitutes or imitations of butter are valid exercise of the police power and are constitutional. Cook vs. State, 110 Ala., 40; Powell vs. Com., 114 Pa. St., 268; Com. vs. Shirley, 152 Pa. St., 170; Com. vs. McCann, 14 Pa. St. Sup. Ct., 221; Pierce vs. State, 63 Ind., 592.

It is unlawful to manufacture or sell products made from vegetable oils or

Digitized by Google

animal fats or oils which are designed to take the place of butter or cheese. It is not necessary to prove the act beyond a reasonable doubt; a preponderance of the evidence is sufficient. People vs. Briggs, 114 N. Y., 56; State vs. Rogers, 95 Me., 94; Palmer vs. State, 39 Ohio, 236.

A state may exclude any compound manufactured in another state and colored in imitation of yellow butter. State vs. Rogers, 95 Me., 94; Fox vs. State, 89 Md., 381; Com. vs. Paul, 148 Pa. St., 559; Hancock vs. State, 89 Md., 725.

Statutes which prohibit the manufacture or sale of any article in imitation of butter or cheese are within the police power of the state. Powell vs. Pa., 127 U. S., 678; Walker vs. Pa., 127 U. S., 699; In re. Brosnahan, 18 Fed. Rep., 62; Com. vs. Huntly, 156 Mass., 236; Butler vs. Chambers, 36 Minn., 69; State vs. Bockstruck, 136 Mo., 335; State vs. Addington, 77 Mo., 110; State vs. Addington, 12 Mo. App., 217.

In selling oleomargarine for butter the intention to deceive is not an essential element of the offense; the sale is prohibited without regard to intention. State vs. Addington, 77 Mo., 110; State vs. Ryan, 70 N. H., 196; State vs. Newton, 50 N. J. L., 549; Com. vs. Gray, 150 Mass., 327; People vs. Hellman, 68 N. Y. S., 66; Same vs. Same, 15 N. Y. C. R., 394.

Furnishing oleomargarine as a part of a meal ordered by a customer is sufficient to convict a restaurant keeper of selling oleomargarine. Com. vs. Miller, 13 Pa. State, 118; Com. Alleghany Co. vs. Hendley, 7 Pa. Super. Ct., 365; State vs. Ball, 70 N. H., 40; Com. vs. Stewart, 159 Mass., 113; Hancock vs. State, 89 Md., 724.

Person selling article for butter which is one-fourth part foreign matter is guilty of violating Act prohibiting sale of substance not butter as butter. People vs. Mahaney, 7 Hun. (N. Y.), 26.

An offer to sell may be inferred from exposing oleomargarine not labeled as such upon the shelves or counter with other pure butter. State vs. Dunbar, 13 Or., 591.

Statute requiring both sides of wagon selling oleomargarine to be placarded with uncondensed gothic letters not less than three inches in length, "Licensed to sell Oleomargarine," is not complied with by putting placard on inside of covered wagon. Com. vs. Crane, 157 Mass., 218.

Sample illegally taken may be used as evidence in prosecution for exposing oleomargarine in imitation of butter. Com. vs. Byrnes, 158 Mass., 172.

Oleomargarine should be marked and packed as required by law and requiring it to be packed and branded as the Commissioner of Agriculture may direct is not a delegation to that officer of the power to declare what acts shall be criminal because the law directs that the same shall be packed and branded and prohibits the sale of those which are not, leaving the kind to be determined by that officer. U. S. vs. Daugherty, 101 F., 439; Ex-parte Hollock, 165 U. S., 526.

An indictment need not allege that oleomargarine was fraudulently sold. Fox vs. State, 94 Md., 143.

A justice of the peace has jurisdiction over the offense of coloring oleomargarine. State vs. Ruedy, 59 Ohio St., 24.

Butter may be colored yellow, but oleomargarine may not be colored yellow in imitation of butter. Com. vs. Vandyke, 13 Penn. Sup. Ct., 484; McCann vs. Com., 198 Penn., 509; In re. Schictlin, 99 Fed., 272.

Law requiring oleomargarine to be colored pink is constitutional. Armour Packing Co. vs. Snyder, 84 Fed. Rept., 136 (Minn.).

National legislation on oleomargarine does not restrict the power of the state. A state may exclude from its markets any compound, manufactured in another state, artificially colored or adulterated so as to cause it to look like an article of food in general use and thereby cheat the general public. Plumley vs. Massachusetts, 155 U. S., 461.

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google

Digitized by Google